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December 6, 2002

By Electronic Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

Re: Application of Qwest Communications International Inc. To Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming, WC Docket No. 02-314.

Dear Ms. Dortch:

AT&T submits this *ex parte* letter to respond to Qwest's last minute attempts to justify the fact that it unlawfully withholds important line qualification information from competitive carriers in clear violation of Checklist Item 2 and the Commission's prior section 271 orders.

Qwest now concedes that it performs mechanized loop testing ("MLT") that it never previously disclosed to (and, indeed, actively concealed from) the Commission, and that Qwest maintains the MLT information in databases that are available to some Qwest employees, but not to CLEC employees. On these undisputed facts, there is no question that Qwest has violated, and continues to violate, Checklist Item 2.

The Act and the Commission's rules are clear and unambiguous. The Act precludes approval of a Section 271 application unless the applicant demonstrates that it provides "[n]on-discriminatory access to network elements in accordance with sections 251(c)(3) and 252(d)(1)."¹ The Commission has repeatedly held that nondiscriminatory "access to OSS functions falls squarely within an incumbent LEC's duty under section 251(c)(3)."² And the Commission has repeatedly stressed that nondiscriminatory access to OSS means, among other

¹ 47 U.S.C. § 271(c)(2)(B)(ii) ("Checklist Item 2").

² *New Jersey 271 Order*, App. C ¶ 26.

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things, “provide[ing] competitors with access to *all* loop qualification information in [the applicant’s] databases.”³

MLT information is unquestionably “loop qualification information. “Loop qualification information identifies the physical attributes of the loop plant.”⁴ As the record in this proceeding makes clear, and as Qwest has conceded, the information obtained from MLTs includes important data relating to the physical attributes of Qwest’s loops.⁵ For example, the MLTs provide key information regarding the electrical parameters of a loop, which is an extremely valuable resource for CLECs attempting to provide advanced services (*e.g.*, DSL services) in competition with Qwest. Indeed, the Commission has explained that to satisfy checklist Item 2, an applicant must, “[a]t a minimum, . . . provide . . . the electrical parameters of the loop, which may determine the suitability of the loop for various technologies.”⁶

Critically, the requirement that section 271 applicants make MLT and other information regarding the physical attributes of a loop available to CLECs is unqualified.⁷ The obligation extends to data that “exists *anywhere* in a BOC’s back office,”⁸ as long as that information “is available to *any* of the incumbent’s personnel.”⁹ The obligation also applies regardless of whether the BOC’s personnel have “manual[] or electronic[]” access to the information.¹⁰ And “a BOC may not filter or digest the underlying information and may not provide only information that is useful in provision of a particular type of xDSL that a BOC offers.”¹¹

With this backdrop, there is no question that Qwest’s concession that it performs MLTs, that it saves the information obtained from those MLTs in a database, that it makes that information available to some (even if not all) of its own personnel, and that it withholds that

³ *Alabama 271 Order* at n.483.

⁴ *UNE Remand Order* ¶ 426.

⁵ See Second Supplemental Declaration of Kenneth Wilson (attached hereto as Exhibit 1) (“Second Supp. Wilson Decl.”) (explaining how each of piece of information provided by MLTs is a physical characteristic of the loop that is important – and in some instances critical – to CLECs provisioning of loops); see also Letter from Praveen Goyal (Covad) to Marlene H. Dortch (FCC Secretary), CC Docket No. 02-314, at 3-5 (dated November 21, 2002) (“Covad November 21 Letter”).

⁶ *Vermont 271 Order* at n.106.

⁷ Attached to this letter (as Exhibit 2) are portions of prior section 271 orders confirming that a BOC’s obligation to make MLT and other information relating to the physical attributes of the loop to CLECs is unqualified and unambiguous.

⁸ *Id.* ¶ 35.

⁹ *Massachusetts 271 Order* ¶ 54 (“[t]he relevant inquiry . . . is not whether [a BOC’s] . . . retail arm or advanced services affiliate has access to such underlying information but whether such information exists *anywhere* in [the incumbent’s] back office and can be accessed by *any* of the incumbent’s personnel.”).

¹⁰ *Vermont 271 Order* ¶ 35.

¹¹ *Id.* ¶ 35.

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information from CLECs, conclusively establishes that Qwest has violated, and continues to violate, Checklist Item 2.

Cornered by the facts and the law, Qwest attempts to escape denial of its application with various “smokescreen” arguments. First, Qwest argues that it is entitled to withhold MLT information because that information is not obtained at the “pre-order” stage. But, as noted above, the Commission already has rejected that argument, and has repeatedly emphasized that *any* loop qualification information relating to the properties of the physical attributes of the loop must be made available to CLECs. Once Qwest runs the MLT test – at any stage – that information remains available to Qwest, and must also be made available to CLECs. Any other result would be manifestly anticompetitive. Once Qwest has run an MLT for a loop at whatever stage of the ordering/provisioning process and for whatever purpose, the information remains available to Qwest, but not CLECs. That information about the capabilities of the loop gives Qwest an enormous advantage, for example, in winback situations where Qwest is competing with the CLEC currently serving a customer (and other CLECs) to obtain the customer’s business.

Second, Qwest argues that it is entitled to withhold MLT information because the other information that is available to CLECs is “adequate.” That argument is both irrelevant and false. It is irrelevant because, as noted above, the Commission already has explained that “a BOC may not filter or digest the underlying information and may not provide only information that is useful in provision of a particular type of xDSL that a BOC offers”¹² – the *CLEC* must be allowed to “make an independent judgement . . . about whether an end user loop is capable of supporting the advanced services equipment the competing carrier needs to install.”¹³ Qwest’s argument is false because the record shows that MLT information is vastly superior to the information that Qwest already provides to CLECs – MLT is the only tool that examines the actual and current loop status, and it returns a host of useful electrical parameters that are not available in the databases that Qwest makes available to CLECs.¹⁴ The databases that Qwest already provides to CLECs on the other hand provide only much more limited historical information, which is notoriously inaccurate and often is not specific to the particular loop at issue.¹⁵

Third, Qwest argues that it is entitled to withhold MLT information because its retail representatives do not have access to that information. That claim also is irrelevant. The Commission has repeatedly held that “[t]he relevant inquiry . . . is not whether [the BOC’s] . . .

¹² *Id.*

¹³ *Id.*

¹⁴ See Second Supp. Wilson Decl. ¶¶ 3-8; Letter from Michael J. Hunseder (AT&T) to Marlene H. Dortch (FCC Secretary), WC Docket No. 02-314 (dated November 7, 2002), Attachment 1 (Supplemental Declaration of Kenneth L. Wilson) ¶¶ 17-19 (attached to Second Supp. Wilson Decl. as Attachment 1) (“Supp. Wilson Decl.”); Covad November 21 Letter at 3-5.

¹⁵ See Supp. Wilson Decl. ¶ 18; see also Covad November 21 Letter at 3-5.

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retail arm or advanced services affiliate has access to such underlying information, but whether such information exists anywhere in [the BOC's] back office and can be access by *any* of [the incumbent's] personnel.”¹⁶ Qwest admits that its “personnel who perform or support provisioning and repair functions” have access to MLT information.¹⁷ Qwest also admits that “other personnel,” which presumably includes its retail personnel, have historically had access to MLT information.¹⁸ Thus, Qwest is obligated to make that information available to CLECs.

Fourth, Qwest argues that it does not have to provide CLECs with information obtained from MLTs because Qwest does not retain MLT information for retail purposes, but only “to keep a record of the loop conversion transaction.”¹⁹ Once again, Qwest misses the mark. Qwest’s claimed purpose for collecting loop qualification information is irrelevant.²⁰ As noted, “[t]he relevant inquiry . . . is whether such information exists anywhere in [the BOC's] back office and can be access by *any* of [its] personnel.”²¹ Therefore, even if it is true that Qwest performs MLT tests solely for recording transactions, Qwest must still make that information available to its competitors.

All of Qwest’s assertions that it uses MLT information for only limited purposes, and that CLECs would not find such information valuable also are refuted by internal statements made by Qwest’s own management. Qwest’s management describe Qwest’s MLT tests as “critical to [Qwest’s] success in providing quality service.”²² And they go on to explain that “allowing competitors access to [MLT information] could be detrimental to [Qwest’s] business.”²³ Qwest’s *post hoc* legal maneuvers to downplay the usefulness of MLT information, therefore, cannot be given any weight.

Moreover, Qwest’s internal emails also refute Qwest’s claim that MLT information is only a record-keeping device that is not available to Qwest personnel. As explained by one Qwest manager, the “MLT test is extremely important and the internal process focus and results are *highly visible to the Network organization*.”²⁴ Qwest’s claims that such information is only

¹⁶ *Massachusetts 271 Order* ¶ 54 (emphasis added).

¹⁷ See Letter from R. Hance Haney (Qwest), to Marlene H. Dortch (FCC Secretary), WC Docket No. 02-314 (dated November 22, 2002) (Qwest November 22 Letter).

¹⁸ *Id.* at 1.

¹⁹ *Id.* at 1-2.

²⁰ *Cf.* Covad November 21 Letter at 4-5.

²¹ *Massachusetts 271 Order* ¶ 54 (emphasis added).

²² See Email from Mary Pat Cheshier to Martha Smith (dated July 25, 2002) (attached to AT&T Comments at Tab A (Stemple Declaration), Att. 2) (“Qwest Management Email”). The Stemple Declaration along with Qwest Management Email is attached to this letter as Exhibit 3.

²³ *Id.*

²⁴ *Id.* (emphasis added).

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available to “limited personnel who perform or support provisioning and repair functions” is therefore highly suspect.

Finally, in addition to Qwest’s refusal to provide access to MLT information, Qwest also refuses to provide CLECs with the same access to other loop qualification databases that it provides to its own personnel. As explained by Mr. Wilson, although Qwest maintains a Loop Facilities Assignment & Control System (“LFACS”), it provides CLECs with only a limited and indirect form of access to LFACS that fails to provide full and accurate information about the properties of unbundled loops.²⁵ LFACS is a standalone database that is linked with many systems, and thus Qwest personnel can access LFACS through a variety of methods – many of which Qwest has never disclosed.²⁶ But what Qwest has admitted is that its network engineers have direct access to LFACS.²⁷ Qwest refuses to provide CLECs with the same type of access, and insists on limiting CLECs to access that is improperly filtered. To the extent that there is *any* loop qualification information contained in LFACS that is not included in the limited databases that Qwest makes available to CLECs – and there clearly is – Qwest does not satisfy its loop qualification obligations even apart from the conceded MLT deficiencies. As Mr. Wilson explains, Qwest’s justifications for its refusal to provide CLECs access to all of the LFACS loop qualification data are without merit – indeed, they are based largely on the same mistaken and improperly narrow view of “pre-ordering” and “provisioning” that Qwest has trotted out to justify its refusal to provide MLT.²⁸ Qwest cannot rely on such semantic distinctions, but must provide CLECs with the same type of nondiscriminatory access to LFACS enjoyed by *all* or *any* of Qwest’s personnel.

For these reasons, Qwest has relied on wordsmithing to avoid direct Commission inquiries as to whether the interfaces available to CLECs and to Qwest employees for obtaining information from LFACS contain different information. The Commission asked Qwest to “provide evidence that all information available to Qwest representatives is the information available” to CLECs.²⁹ Qwest avoided the answer. First, Qwest narrowed the question, stating that it “assume[s]” the term “Qwest Representatives” in the Commission’s question means “Qwest Retail” representatives. Qwest’s re-writing of the Commission’s question, of course, is designed to avoid the critical inquiry – *i.e.*, do *any* Qwest personnel have access to loop qualification information that are unavailable to CLECs. In any event, even with respect to Qwest’s unreasonably narrow interpretation of the Commission’s inquiry, Qwest still fails to answer the question. Qwest simply notes that the data *source* for the information that is available to Qwest retail representatives and CLECs contains the same information. But that

²⁵ Suppl. Wilson Decl. ¶¶ 22-30.

²⁶ *Id.* ¶ 25.

²⁷ *See id.* ¶ 26; Notarianni/Doherty (Qwest III) Decl. ¶ 31.

²⁸ Suppl. Wilson Decl. ¶¶ 26-30.

²⁹ Qwest November 7 Ex Parte at 13.

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answer does not explain whether the different databases that are actually available to Qwest and CLECs draw the same information from the common database for Qwest and CLEC personnel.

For the foregoing reasons, there is no legitimate dispute that Qwest, by failing to make all loop qualification information available to CLECs, is violating Checklist Item 2. And, none of Qwest's purported justifications for withholding that information are relevant or well founded. Accordingly, Qwest's application must be rejected.

Respectfully submitted,

/s/ David L. Lawson
David L. Lawson

Enclosures

cc: Matthew Brill
Michael Carowitz
William Dever
Eric Einhorn
Sam Feder
Jordan Goldstein
Christopher Libertelli
Carol Matthey
Gary Remondino

AT&T December 6 Ex Parte Letter
Exhibit 1

(Second Supp. Decl. of Kenneth L. Wilson)

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Application by)	
Qwest Communication International, Inc.)	WC Docket No. 02-314
For Authorization to Provide)	
In-Region, InterLATA Services in the States)	
of Colorado, Idaho, Iowa, Montana,)	
Nebraska, North Dakota, Utah,)	
Washington, and Wyoming)	

**SECOND SUPPLEMENTAL DECLARATION KENNETH L. WILSON
ON BEHALF OF AT&T CORP.**

1. My name is Kenneth L. Wilson. I am a senior Consultant and Technical Witness with Boulder Telecommunications Consultants, LLC. My business address is 970 11th Street, Boulder, Colorado, 80302. I am the same Kenneth Wilson that has submitted prior testimony in this proceeding (and in the *Qwest I* and *Qwest II* proceedings), and that testimony contains my qualifications, work experience, and educational background.¹

2. In my November 7, 2002 testimony (attached hereto as Attachment 1), I demonstrated that Qwest's failure to make available information obtained from its mechanized loop tests ("MLTs") deprives CLECs of important information on the physical characteristics of loops. The purpose of this Second Supplemental testimony is to respond to Qwest's claims that CLECs would not benefit from the information obtained by Qwest when it performs MLTs.

3. As a preliminary matter, it is notable that Qwest's claims that CLECs would not benefit from information obtained from MLTs is inconsistent with statements made by

¹ See, e.g., AT&T (Qwest III) Finnegan/Connolly Wilson Decl.; AT&T November 7, 2002 ex parte letter; AT&T (Qwest III) Wilson Decl.; AT&T (Qwest II) Finnegan/Connolly Menezes Decl.; AT&T (Qwest II) Wilson Decl.; AT&T (Qwest I) Finnegan/Connolly/Menezes Decl.; AT&T (Qwest I) Wilson Decl.

Qwest management in an internal email. According to Qwest management, making MLT information available to competitors would be “detrimental to [Qwest’s] business.”² This statement confirms that MLT information would be useful to CLECs – indeed, how could making MLT information that, according to Qwest is not useful to CLECs, be construed as detrimental to Qwest’s business? The email goes on to say that “[t]he MLT test is critical to [Qwest’s] success in providing quality services” – again, how could information that is so important to Qwest not also be important to CLECs? The bottom line is that the internal statements made by Qwest appear to be completely inconsistent with Qwest’s pleadings before the Commission. In any event, as I explain below, there is no question that the many pieces of information that Qwest regularly obtains from its MLTs are very important to CLECs.

4. *Balance Between The Tip And The Ring.* Qwest concedes that its MLTs return information relating to the “balance between the tip and the ring,” and that Qwest does not include that information in the databases to which CLECs have access. Qwest says that this information would not be useful to CLECs.³ That is dead wrong. This test measures the symmetry of the tip and ring conductors with respect to each other, other conductors, and to any shield in the cable. This information can be valuable for two reasons. First, it can show the magnitude of longitudinal currents, including crosstalk currents and powerline harmonics, which are converted to circuit noise. Second it can provide the amount of unbalanced longitudinal currents in the loop that may cause crosstalk in adjacent loops. Such impairments can hinder DSL performance and may indicate situations where interference between circuits is occurring. The test can also indicate whether there are problematic bridge taps that would prevent DSL

² See AT&T (Qwest III), Stemple Decl., Attachment 1 (email from Mary Pat Cheshier (Qwest manager) to the QCCC organization).

³ Qwest November 7 Letter, at 4.

from operating properly. These impairments can cause problems in DSL, even when the impairments are not noticeable in normal voice transmission. Thus, there is no question that CLECs would benefit from that MLT information.

5. *Ground Conditions On Either End.* Qwest also admits that its MLTs return information relating the “ground conditions on either end” of a line that is not made available to CLECs.⁴ This test indicates whether there is noise from tip and ring to ground, which is called power influence (“PI”). This also provides an indication of noise-to-ground, which is also called longitudinal or common-mode noise. Some advanced services equipment can be sensitive to PI and may not operate properly if levels are too high. Again, these impairments may not impact voice, but could have a substantial impact on the ability to provide advanced services.

6. *Foreign Voltage.* Qwest acknowledges that its MLTs return information relating the “foreign voltage” on a line which Qwest does not make available to CLECs.⁵ This test measures voltages, either direct or induced, that enter the loop from sources not associated with the loop itself. Depending on the voltage levels on the line, xDSL services may not operate properly if excessive levels of foreign voltages are on the line. Such voltages may interfere with DSL or other advanced services circuitry, due to additional noise or overload that such voltages can cause. The foreign voltages may not effect voice terminals, yet would still be above the threshold that will negatively impact CLECs ability to provide advanced services over particular lines. Accordingly, this information is important to CLECs.

7. *Electrical Characteristics.* Qwest concedes that its MLTs return information relating the “electrical characteristics” of a line, and that Qwest does not make that information

⁴ Qwest November 7 Letter, at 4.

⁵ Qwest November 7 Letter, at 4.

available to CLECs.⁶ This test is really five tests - loop current, circuit loss, metallic noise, power influx and longitudinal balance. Circuit loss, noise, loop current, and power influx can all have a negative impact on xDSL services, depending on the type of DSL equipment used by the CLEC. Loops with high circuit loss and high noise may exceed thresholds for particular DSL equipment that have maximum loss and noise requirements. Loops with improper loop current, high power influx and poor longitudinal balance may have problems with noise and crosstalk that will impact advanced services, similar to the problems discussed above. These impairments may not impact voice terminals, yet could still have deleterious effects on advanced services equipment. Accordingly, this electrical characteristics information is very important to CLECs.

8. Qwest suggests that the data it conceals from CLECs would only be useful if a CLEC has detected a problem when provisioning xDSL services over a line. According to Qwest, the MLT test data could be used to diagnose and fix the problem. But that information is also very useful at the pre-ordering stage and can, for example, identify loops that the CLEC should not waste time and resources (and reputation) attempting to provision with advanced services. And once the MLT has been run, it is available to Qwest, but *not* other CLECs, *before* provisioning begins in a winback situation, for example. Moreover, even if Qwest chooses not to take advantage of this information, Qwest cannot assume that because *Qwest* does not find these tests *necessary* for proper functioning of its advanced services that *CLECs* would not have a need for such test results. CLECs may be utilizing different equipment that has different requirements, either today, or in the future.

9. In sum, Qwest's claims that CLECs would not benefit from the information obtained from MLTs are baseless.

⁶ Qwest November 7 Letter, at 4.

VERIFICATION PAGE

I declare under penalty of perjury that the foregoing Declaration is true and correct.

/s/ Kenneth Wilson

Kenneth Wilson

Executed on: December 5, 2002

SECOND SUPPL. DECLARATION OF KENNETH WILSON
ATTACHMENT 1
(First Suppl. Decl. of Kenneth Wilson)

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Application by)	
Qwest Communications International, Inc.)	
For Authorization To Provide)	WC Docket No. 02-314
In-Region, InterLATA Services in the)	
States of Colorado, Idaho, Iowa, Montana,)	
Nebraska, North Dakota, Utah,)	
Washington, and Wyoming)	

**SUPPLEMENTAL DECLARATION KENNETH L. WILSON
ON BEHALF OF AT&T CORP.**

1. My name is Kenneth L. Wilson. I am a senior Consultant and Technical Witness with Boulder Telecommunications Consultants, LLC. My business address is 970 11th Street, Boulder, Colorado, 80302. I am the same Kenneth Wilson that has submitted prior testimony in this proceeding (and in the *Qwest I* and *Qwest II* proceedings), and that testimony contains my qualifications, work experience, and educational background.¹

I. PURPOSE AND SUMMARY OF DECLARATION

2. The purpose of this Declaration is to reply to claims made by Qwest in its most recent reply comments and supporting declarations regarding the methods by which Qwest provides competitive local exchange carriers ("CLECs") with access to Qwest's loop

¹ See, e.g., AT&T (Qwest II) Finnegan/Connolly Menezes Decl.; AT&T (Qwest II) Wilson Decl.; AT&T (Qwest I) Finnegan/Connolly/Menezes Decl.; AT&T (Qwest I) Wilson Decl.; AT&T (Qwest III) Finnegan/Connolly Wilson Decl.

qualification information.² As part of Qwest's obligation to provide nondiscriminatory access to its OSS, the Telecommunications Act of 1996 and the Commission's rules require Qwest to "provide . . . nondiscriminatory access to the same detailed information about the loop that is available to the incumbent."³ Further, the "relevant inquiry is not whether the retail arm of the incumbent has access to the underlying loop qualification information, but rather whether such information exists *anywhere* within the incumbent's back office and can be accessed by *any* of the incumbent LEC's personnel."⁴ Moreover, the incumbent "may not 'filter or digest' the underlying information."⁵ Such information in unfiltered form is critical, because CLECs must be able to "make an independent judgment . . . about whether an end user loop is available of supporting the advanced services equipment the competing carrier intends to install."⁶ Qwest has not met this critical checklist obligation in two fundamental respects.

3. First, although Qwest has denied that it routinely conducted mechanized loop tests ("MLT") prior to cutting over loops to CLECs,⁷ a former Qwest employee provided evidence that Qwest in fact performed MLT for every loop it provides to CLECs. Faced with

² See Supplemental Reply Comments of Qwest Communications International Inc. In Support of Consolidated Application for Authority To Provide In-Region, InterLATA Services in Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming, at 30-32, (filed Oct. 25, 2002) ("Reply Comments"). The reply declarations submitted by Qwest with its Reply Comments are cited using the name of the declarant.

³ *UNE Remand Order* ¶ 427.

⁴ *Id.* ¶ 430 (emphasis added).

⁵ *New Hampshire/Delaware 271 Order*, App. F, ¶ 35 (emphasis added).

⁶ *Alabama 271 Order*, Att. H, ¶ 35. CLECs also need such information to determine (1) whether the BOC has spare facilities (including fragments of loops) that the CLEC may need to provide such service, and (2) whether they can provide service to areas served by IDLC loops.

⁷ An MLT enables the user to perform a quick test on a loop and retrieve essential data regarding the characteristics of the loop (including, for example, loop length, insertion loss, and the presence of integrated digital loop carriers).

this evidence, Qwest now admits that this has been its practice since July 2001. This admission refutes Qwest's previous representation to this Commission that it "is not withholding MLT information from CLECs."⁸ The admission also proves that Qwest must provide CLECs with the results of these MLT tests, because it is now not disputed that MLT results contain valuable loop qualification information that Qwest retains and that is accessible by Qwest employees. Furthermore, Qwest must concede that there is value in conducting MLT on a loop before the loop is provisioned and grant CLECs the same capability on any loop requested.

4. Second, Qwest is improperly filtering information from its primary loop qualification database, the Loop Facilities Assignment & Control System ("LFACS"). Qwest provides CLECs with a limited and indirect form of access to LFACS that fails to provide full and accurate information about the properties of unbundled loops. Qwest contends this access is sufficient because its retail arm also has mediated access to LFACS. However, even if this is true for some purposes, LFACS is a stand alone database that is linked with many systems, and thus Qwest personnel can access LFACS through a variety of methods – many of which Qwest has never disclosed. It has admitted, however, that its network engineers have direct access to LFACS. CLECs must have the same type of nondiscriminatory access to LFACS enjoyed by *all* or *any* of Qwest's personnel, not the access Qwest's retail arm possesses.

⁸ See, e.g., Qwest I Notarianni/Doherty Reply Decl., ¶ 50.

**II. QWEST FAILS TO DEMONSTRATE THAT IT PROVIDES
NONDISCRIMINATORY ACCESS TO LOOP QUALIFICATION
INFORMATION.**

**A. Qwest Does Not Provide CLECs With Access To Mechanized Loop Test And
Results From Such Tests, Even Though Qwest Now Admits That It Performs
Such Tests Itself.**

5. In prior testimony, my colleagues and I explained that, in a variety of situations, Qwest performs mechanized loop testing (“MLT”) on loops before service has been provisioned to determine whether it can provide DSL to its retail customers.⁹ Further, new evidence in this proceeding brought to light by a former Qwest employee demonstrated that Qwest performs MLTs for each and every loop that it cuts over to CLECs.¹⁰ Nevertheless, Qwest does *not* provide CLECs with the ability to perform MLT, and it has *never* provided CLECs with the complete results of MLTs it performs prior to the cutover process. Indeed, in many prior proceedings, Qwest has claimed that MLT was used only for maintenance and repair, and suggested that it did not routinely run MLTs, but had done so more than two years ago.¹¹

6. Faced with the new evidence, Qwest’s declarant now admits that, since July of 2001, the Qwest CLEC Coordination Center (“QCCC”) has implemented “processes for performing an MLT on analog unbundled loops that were being converted from Qwest dial tone” to CLECs.¹² Qwest further admitted that it performs these MLTs “usually two or three days *prior* to the due date for a CLEC unbundled loop.”¹³ Qwest also concedes that the purpose of

⁹ See AT&T (Qwest III) Finnegan/Connolly/Wilson Decl. ¶¶ 32-33.

¹⁰ *Id.* ¶¶ 34-41 (describing testimony of Edward Stemple).

¹¹ *E.g.*, Qwest I Notarianni/Doherty Reply Decl. ¶ 48 (“MLT is primarily a repair test. It is not meant to be nor was it ever designed to be a pre-order qualification tool for loops”); Notarianni-Doherty (Qwest II) Reply Decl. ¶¶ 46, 56.

¹² Chesier (Qwest III) Reply Decl. ¶ 3.

¹³ *Id.* (emphasis added).

these MLTs is to “ensure that Qwest was able to provide a loop which met all technical specifications to the CLEC on the CLEC’s requested due date.”¹⁴ Further, Qwest admits that it retains the information from the MLTs, and specifically that “information from the MLT is ‘cut’ from the coordinator’s screen and ‘pasted’ into the circuit notes of Qwest’s WFA system.”¹⁵

7. Given these admissions, there is no doubt that Qwest should be required to provide the results of these MLTs to CLECs. The information obtained from these MLTs plainly provides information on the “technical specifications” of the loop and current loop status. Further, the information is, by Qwest’s admission, “maintained as a complete record” as part of Qwest’s back office system.¹⁶ And, as Mr. Stemple’s testimony shows and as Qwest now admits, Qwest’s employees can access the results of the MLT. Under the Commission’s rules, these facts demonstrate that Qwest must provide access to the MLT results.¹⁷

8. Competitors seek the results of these MLTs for the same reason that Qwest performs them in the first instance: “to ensure that the loop as provisioned would perform as specified.”¹⁸ A CLEC can use the MLT to verify whether a particular loop supports the services that the customer requests, including advanced services. As Qwest itself describes, the loop qualification information that exists from other sources may not reveal certain characteristics of

¹⁴ *Id.*

¹⁵ *Id.* ¶ 6; *see id.* (“prior to January 1, 2002, a hard copy of the CLEC’s MLT result was made and included in a file”).

¹⁶ *Id.* ¶ 7.

¹⁷ *UNE Remand Order* ¶ 430 (the “relevant inquiry is . . . whether [underlying loop qualification] information exists *anywhere* within the incumbent’s back office and can be accessed by *any* of the incumbent LEC’s personnel”) (emphasis added).

¹⁸ Notarianni-Doherty (Qwest III) Reply Decl. ¶ 48.

the loop that can cause “marginal performance problems.”¹⁹ By performing an MLT, additional and up-to-date data can be obtained that can permit technicians to identify such problems so that they can be “repaired prior to turning the loop over to the CLEC and, in turn, the CLEC customer.”²⁰ The results of the MLTs, therefore, provide additional, critical data that CLEC can use to ensure that a particular loop will support advanced services.

9. Qwest’s declarants offer a variety of justifications for why Qwest should nonetheless not be required to provide CLECs with access to these MLT results, but none are valid. First, Qwest finds it significant that these MLTs are performed only on CLEC orders, and not for Qwest retail customers.²¹ But the Commission’s rules are very clear that loop qualification information should be made available regardless of its use by Qwest’s retail arm – all that matters is whether such information can be accessed by any of Qwest personnel, and here there is no dispute that QCCC employees and others can access the MLT results

10. Qwest also claims that it need not provide MLT results because the MLTs are conducted as “part of the loop provisioning process,” and not for “purposes of loop qualification.”²² According to Qwest, these MLTs have “no relationship to or connection with loop qualification.”²³ But as with the uses of LFACS discussed below, Qwest takes an

¹⁹ Chesier (Qwest III) Reply Decl. ¶ 3.

²⁰ *Id.* In addition, the use of MLTs would enable the CLEC to verify the accuracy of the loop qualification information that Qwest makes available to CLECs. There are situations where a CLEC has reason to believe that the loop information in Qwest’s systems is inaccurate, as when one residence already has advanced services and Qwest’s systems state that the house next door cannot accommodate the same service. The MLT results can help to clarify the issue.

²¹ Chesier (Qwest III) Reply Decl. ¶ 4; Notarianni-Doherty (Qwest III) Reply Decl. ¶ 47.

²² Notarianni-Doherty (Qwest III) Reply Decl. ¶ 48; *see also* Chesier (Qwest III) Reply Decl. ¶¶ 4-5.

²³ *Id.* ¶ 5.

improperly narrow view of loop qualification information. In Qwest's view, "loop qualification" is strictly limited to a "pre-order" inquiry – in other words, once an order is placed by a CLEC, there is by definition no more loop qualification.²⁴ There is no basis for this narrow view. Rather, loop qualification information consists of *any* information, regardless of timing, that Qwest obtains regarding the properties of the loop that can be used to determine if the loop is capable of supporting advanced services.²⁵ It is clear from the discussion above (*see* paragraphs 6 to 8) that Qwest performs the MLTs at issue precisely for this purpose. Qwest's effort to deny CLECs access to these MLTs by relying again on a distinction between loop qualification information gathered prior to the CLEC order and information gathered before an order is untenable.

11. In this regard, Qwest finds it significant that "the MLT results are not entered into Qwest's LFACS systems or Qwest's loop qualification database."²⁶ But that fact does not show that the MLT results at issue do not provide useful loop qualification information. To the contrary, Qwest's failure to update its other databases with this MLT information simply proves the claims of CLECs that Qwest provides inadequate loop qualification information in its databases it allows CLECs to access, and then buries additional useful information like MLT results in other databases that it does not make available to CLECs.²⁷

²⁴ *Id.*

²⁵ *See UNE Remand Order* ¶ 426 ("Loop qualification information identifies the physical attributes of the loop plant . . . that enable carriers to determine whether the loop is capable of supporting xDSL and other advanced technologies").

²⁶ Chesier (Qwest III) Reply Decl. ¶¶ 6, 8; *see* Notarianni-Doherty (Qwest III) Reply Decl. ¶ 49. Of course, Qwest's declarants previously suggested that Qwest had loaded into the loop qualification tools all of the loop length information from the MLTs it has conducted. *See, e.g.,* Notarianni-Doherty (Qwest II) Reply Decl. ¶ 46.

²⁷ *See* AT&T (Qwest III) Finnegan/Connolly/Wilson Decl. ¶¶ 25, 30, 36-37; AT&T (Qwest II) Finnegan/Connolly/Menezes Decl. ¶ 151. Qwest has previously admitted before this

12. Further, Qwest's claims that these MLTs are performed for provisioning purposes and not for pre-ordering functions ignores the essential purpose of those functions. The process of provisioning of UNE-loops entails the physical work to cut them over to the CLEC. This requires, among other things, technicians to re-arrange jumpers on frames at the central office and reassignment of control of the facility. The purpose of performing an MLT (even after an order has been placed) has nothing to do with this provisioning process. Indeed, the loop can be "provisioned" with or without the performance of MLT. The MLTs that Qwest performs are intended to provide assurances that the loop is in good working order for the services that are required. This function is a pre-provisioning process, not a provisioning process.

13. This is evident from Qwest's own processes on the retail side. When Qwest uses MLT before a retail order is provisioned, the functions of these processes are identical and the absurdity of Qwest's argument is made clear. Qwest will perform an MLT – before the loop is provisioned and after an end user's order is submitted – where Qwest needs to investigate the quality of a loop to assure that the desired service can be provided.²⁸ The Qwest investigation of loops in this manner would be the same step in their retail process as a pre-order MLT would be for a CLEC. The investigation of the loop by Qwest would be after the end user has contacted them for service, just as the CLEC use of MLT to investigate the loop would be after the end-user customer has contacted the CLEC for service. But the functions of the MLT process are the same regardless. Qwest continues to fall back on a semantic game, relying on the word "pre-order" in attempt to limit the scope of MLT and loop qualification information – but this is

Commission that it conducted MLTs to correct inaccuracies and omissions regarding loop length information in its databases. Notarianni/Doherty (Qwest II) Decl. ¶ 105.

²⁸ However, even though Qwest has never denied that its retail arm runs MLT before provisioning and after the acceptance of an order, Qwest has *never* revealed its processes that allow its personnel to do so.

because Qwest knows that, when dealing with retail customers, there is by definition no “pre-ordering” step. Because Qwest cannot predict which of its end users customers will call next, they cannot run MLT on their loop before they request a new service.

14. In short, the CLECs’ need to investigate, prior to provisioning, the properties of loops using MLT is identical to Qwest’s purpose in performing such tests – to ensure that the loop has the properties that allow it to provide the services requested by the customer. Currently, the only obstacle preventing the CLEC from obtaining MLT results before provisioning is Qwest’s refusal to allow it, apparently because it knows that providing such access will be detrimental to its own retail business. This is discriminatory in all senses of the word, and Qwest can not comply with its obligations until this policy is changed.

15. Finally, based on results from MLTs performed for a mere three loops, Qwest contends that CLECs do not need access to the MLT results that Qwest performs because Qwest retains only a limited amount of information from the MLTs, most of which is already available to CLECs from other sources.²⁹ This response is insufficient for a number of reasons.

16. *First*, the evidence behind Qwest’s claims is extremely limited, and there are numerous reasons to doubt Qwest’s claims that the information provided by MLTs is so limited. Qwest’s bases its claim solely on “three examples” out of the thousands of MLTs it has conducted since July 2001. Qwest provides no assurances that these three examples are by any means typical of all MLTs it conducts. In fact, MLTs can be configured to return hundreds of different data points regarding a loop’s characteristics.³⁰ The testimony provided by Qwest’s former employee, Mr. Stemple, shows that Qwest itself obtained “very many data fields

²⁹ Chesier (Qwest III) Reply Decl. ¶¶ 9-13; Notarianni/Doherty (Qwest III) Decl. ¶¶ 49-50.

³⁰ *E.g.*, Covad (Qwest I) Comments at 22 n.32.

associated with the MLT results,” and that Qwest service representatives were instructed to cut and paste those results into Qwest-maintained records.³¹

17. Moreover, Qwest’s claims that MLT does not provide data regarding loop qualification information like bridge taps, presence of DLC, or pair gain are inconsistent with Qwest’s own materials.³² Qwest provides CLECs with a list of features for MLT when used for repair and maintenance.³³ The tests listed include ones that will show if there is a bridge tap that is causing a balance problem, which could definitely impact DSL.³⁴ Likewise, the MLT tests listed in the repair guide show dozens of tests that will reveal issues with digital loop carrier of all types, allowing a carrier to obtain significant information on digital loop carrier from MLT – again, directly contrary to Qwest’s claims.

18. *Second*, even if some of the data fields obtained from the MLT results at issue are the same fields that CLECs obtain from other sources, the MLT results will almost certainly be more accurate and up-to-date. The databases that Qwest provides to CLECs indisputably provide only historical information (which is, particularly in the Qwest region, notoriously inaccurate), but the MLT test will show the actual and current characteristics for the loop as of the date of the MLT test. Because it is the only tool that examines the actual and current loop status, there are a host of real world engineering issues that MLT results can shed light on.

³¹ AT&T Stemple (Qwest III) Decl. ¶ 6.

³² Notarianni/Doherty (Qwest III) Decl. ¶¶ 35-36, 49-50.

³³ However, based on my experience and the comments of other CLECs, this list by no means provides all of the data that an MLT can provide.

³⁴ *E.g.* Test 93 for “Poor Balance” states that “No major faults are detected on the line except poor longitudinal balance and poor capacitive balance. This condition could be caused by ringers improperly connected to ground, or a cable imbalance due to bridge taps, or sometimes incomplete line records. (if a reg is not listed in the line records, it will look like an unbalanced line).”

19. An MLT, for example, would enable a CLEC to determine the presence of any electronics or equipment on the loop that would interfere with DSL service – information that is very important in determining whether the loop will support the services that the CLEC seeks to provide. In addition, Qwest’s declarants admit that MLT will provide more accurate information regarding loop length.³⁵ Indeed, Qwest recently admitted that the loop length information in its databases is not fully accurate. In recent Minnesota proceedings, Qwest’s witness acknowledged that Qwest’s databases gather loop length information for only one loop in a customer serving terminal, and that Qwest simply assumes that the loop distance for that loop is the same for all other loops in that serving terminal.³⁶ Thus, for many loops, the loop length data in Qwest’s databases do not constitute the *actual* lengths for those loops, but simply an average based on a sample. There are numerous reasons why the use of a sample will not be accurate for the total. For example, the loop that is chosen for the test may have bridge taps or may have terminal equipment that creates an inaccurate result. It is always better to test the actual loop that will be used, when testing is deemed necessary – and the MLT results at issue here will provide that loop length information.

20. *Third*, and in all events, Qwest’s withholding of these MLT results from CLECs, and its refusal to allow the CLEC to use MLT before provisioning, is improper because the FCC’s rules make clear that the CLEC is entitled to make an “independent judgment” regarding a loop’s capability to support the advanced services equipment the CLECs intends to

³⁵ See Chesier (Qwest III) Reply Decl. ¶ 13.

³⁶ See AT&T (Qwest III) Finnegan/Connolly/Wilson Decl. ¶ 37 & Att 1. (citing Qwest testimony that Qwest “actually performs an MLT on only one loop in a customer serving terminal. That distance is then adjusted”).

install.³⁷ Accordingly, there is no basis for Qwest's claims that the "MLT information at issue would be of no use to CLECs."³⁸ It is the CLECs, not Qwest, which must make that determination.

21. By the same token, Qwest must allow CLECs the capability to do MLT before the loop is provisioned. There is now undisputed evidence that Qwest performs such tests as a regular matter on loops that are to be cutover to the CLEC. A full examination of Qwest internal processes and procedures would no doubt show that Qwest uses MLT in many cases on their own retail orders where issues arise before a service is provisioned. CLECs must be granted the same capability. Qwest is incorrect in its pronouncements that MLT does not provide useful information before service is provisioned.

B. Qwest Improperly "Filters" The Information From Its LFACS Database, And Does Not Provide CLECs With All Of The Methods To Access LFACS That Qwest Employees Possess.

22. Qwest has failed to demonstrate that it provides CLECs with nondiscriminatory access to its LFACS. In this proceeding and throughout the state proceedings, Qwest has gone to great lengths to avoid providing information about the complete contents of LFACS and the complete enumeration of ways in which Qwest personnel are able to access LFACS. However, there is no doubt that LFACS contains loop qualification information that Qwest must provide to CLECs on a nondiscriminatory basis.

23. As described in prior testimony, LFACS is the main repository for information on Qwest's loop facilities.³⁹ Among other things, LFACS contains the base

³⁷ *Alabama 271 Order*, Att. H, ¶ 35.

³⁸ Notarianni/Doherty (Qwest III) Decl. ¶ 50.

³⁹ *See* Finnegan/Connolly/Wilson (Qwest III) Decl. ¶ 25.

information on loop facilities that will identify spare facilities. Apart from data derived from mechanized loop testing (as described above), LFACS generally represents the most current information on loop characteristics. Thus, LFACS indisputably contains information about loops that can be used by CLECs to make an independent judgment regarding a loop's ability to provide advanced services. Further, there is no dispute that the information in LFACS is "within [Qwest's] back office." Under the Commission's rules, therefore, access to LFACS must be provided so long as it is accessible by "any" of Qwest's personnel.⁴⁰

24. Qwest, however, has failed to provide evidence that shows how all of its personnel can access the LFACS database, and that CLECs have nondiscriminatory access to *all* of the methods by which Qwest employees obtain access to LFACS. According to Qwest, its retail representatives access the LFACS database through a chain of additional applications, including the Loop Qualification Data Base ("LQDB"). See Notarianni & Doherty (Qwest III) Reply Declaration ¶ 30 (explaining Figure 12.7). Because CLECs have mediated access to the LQDB through IMA or through a web download capability, CLECs have, in Qwest's view, full and nondiscriminatory access to the LQDB and, in turn, to LFACS. *Id.*

25. However, even if Qwest is correct, its response does not fully answer whether CLECs have the same access to LFACS as "any" Qwest personnel. LFACS is a stand alone system, and there are undoubtedly multiple entry points to LFACS. But rather than disclose all of the systems that Qwest personnel may use to access LFACS, Qwest identifies only a single method used by its retail representatives. Because Qwest has not disclosed this information, CLECs are required to engage in a guessing game to attempt to identify other systems and methods that Qwest personnel use to obtain access to information in LFACS.

⁴⁰ UNE Remand Order ¶ 430.

26. Nevertheless, as explained in prior testimony, CLECs have discovered that there are in fact additional systems that allow Qwest employees to access LFACS – systems that are *not* being made available to CLECs.⁴¹ Recently, Qwest has finally “acknowledg[ed] that Qwest network technicians have access to LFACS.” *See* Notarianni & Doherty (Qwest III) Reply Declaration ¶ 31. According to Qwest, however, it will not provide similar access to CLECs, because Qwest’s network engineers access LFACS not for “pre-ordering” purposes but for “provisioning purposes.” *Id.*

27. As I understand Qwest’s legal obligation, nothing in the Act or Commission’s rules allow Qwest to limit CLECs’ access to loop qualification information based on Qwest’s unilateral view that the Qwest employees are accessing the data for a certain purpose. Even if that were not true, the line that Qwest attempts to draw between “pre-ordering” and “provisioning” is, in these circumstances, not a meaningful one.

28. As Qwest’s declarants admit, Qwest’s network engineers are accessing LFACS primarily as an assignment tool to determine what circuit can be used.⁴² When a question arises as to the correct circuit, Qwest’s engineers can refer to the detailed information in LFACS to see if the circuit in question is appropriate for the services at issue. CLECs need to review LFACS information for the same fundamental reasons: in both cases, CLECs and the Qwest network engineers can access LFACS to determine whether a facility will meet the requirements for the services at issue. The only difference is that Qwest also uses LFACS to

⁴¹ Finnegan/Connolly/Wilson (Qwest III) Decl. ¶ 27 & Att. 1.

⁴² *See* Notarianni/Doherty (Qwest III) Reply Decl. ¶ 31 (LFACS is “used for the assignment of facilities”).

pick and assign a facility (which the CLEC need not do because Qwest does that on behalf of the CLEC).⁴³

29. The distinction that Qwest attempts to draw here between LFACS access for “pre-ordering” purposes as opposed to “provisioning” purposes is largely a semantic one. It may be that, when Qwest network engineers examine LFACS, they are doing so after an “order” by a CLEC wholesale customer has been placed. However, the reasons that these engineers refer to LFACS involve the same inquiry that occurs at the pre-order stage: they are obtaining information to determine if a particular circuit is engineered in a way that enables it to provide the type of services, advanced or otherwise, in question. Accordingly, it is simply not true that these Qwest network engineers are never accessing LFACS “for provisioning purposes, not to qualify loops for DSL service.” Notarianni/Doherty (Qwest III) Reply Decl. ¶ 31. CLEC engineers need access to LFACS for essentially the same reasons as Qwest engineers, because LFACS contains the information that will enable them to make an independent judgment regarding whether, and how, the CLEC can provide quality services.

30. The access that Qwest’s network engineers use to qualify particular loops is one additional method by which Qwest employees can access LFACS, but there are likely other methods of access available to Qwest personnel.⁴⁴ For example, LFACS is also used to generate reports on spare facilities. Although Qwest has never admitted it, there is likely another Qwest

⁴³ There is no merit to the claim that CLECs do not need the same access to LFACS as Qwest’s network engineers because the engineers will “access LFACS on behalf of . . . CLECs.” Notarianni/Doherty (Qwest III) Reply Decl. ¶ 31. The CLECs are entitled to such information to make an “independent determination” about the loop qualification information.

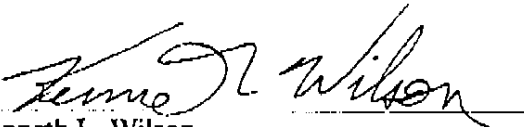
⁴⁴ As I stated in prior testimony, the issue here is not, as Qwest tries to frame it, whether Qwest employees have “direct” access to LFACS, such that CLECs must also have “direct” access. Although Qwest engineers *do* have direct access to LFACS, AT&T does not object to accessing LFACS through an interface or through some form of mediated access (such as IMA), as long as AT&T can retrieve information from LFACS to the same extent as Qwest itself (*i.e.*, without having the information “filtered” by Qwest).

system that works with LFACS to generate reports on spare facilities.⁴⁵ But because Qwest will not disclose the names of its systems that access LFACS and how those systems are used by Qwest personnel, it is difficult for CLECs to verify other methods by which Qwest employees access LFACS. Disclosure of such information is critical, because where Qwest employees have multiple methods to access LFACS, then CLECs must have the same nondiscriminatory access.

⁴⁵ As explained in prior testimony, LFACS contains far more information than the Raw Loop Data Tool ("RLDT") to which CLECs have access, because the RLDT does not contain complete information on loop conditioning and spare facilities that are not connected to the Qwest switch, even though such information is available to Qwest's own engineers. *See* AT&T (Qwest II) Finnegan/Connolly/Menezes Decl. ¶ 144. Qwest's assertions that the RLDT provides information on spare facilities is simply not backed up by any evidence. *See* AT&T (Qwest III) Finnegan/Connolly/Wilson Decl. ¶ 26.

VERIFICATION PAGE

I declare under penalty of perjury that the foregoing Declaration is true and correct.


Kenneth L. Wilson

Executed on: November 7, 2002

**AT&T DECEMBER 6 EX PARTE LETTER -- EXHIBIT 2
EXCERPTS OF PRIOR SECTION 271 ORDERS
RELATING TO LOOP QUALIFICATION**

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TAB 1

(Alabama 271 Order ¶¶ 141-143 & App. H 35)

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Joint Application by BellSouth Corporation,)	
BellSouth Telecommunications, Inc., And)	WC Docket No. 02 - 150
BellSouth Long Distance, Inc. for Provision)	
of In-Region, InterLATA Services in)	
Alabama, Kentucky, Mississippi, North)	
Carolina, and South Carolina)	

MEMORANDUM OPINION AND ORDER

Adopted: September 18, 2002

Released: September 18, 2002

By the Commission: Commissioner Copps issuing a statement.

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BellSouth Georgia/Louisiana Order, BellSouth provides a PSO flag in the LENS interface to alert competitive LECs that a service order is pending.⁴⁷⁷ BellSouth explains that PSO information is proprietary customer information, but competitive LECs have the ability to track the details of pending service orders for their own customers using BellSouth's CSOTS.⁴⁷⁸ Accordingly, we do not find that ITC^DeltaCom's claim warrants a finding of checklist noncompliance.

140. Covad's contention, that BellSouth plans to discontinue support for its current TAG pre-ordering interface prior to the introduction of Electronic Data Interchange (EDI) support for pre-ordering functions and thereby impose additional and unnecessary costs on Covad, is premature and thus not relevant to our determination here.⁴⁷⁹ Specifically, Covad asserts that unless the Commission requires BellSouth to maintain its existing TAG interface until it makes its EDI interface available for pre-ordering functions, competitive LECs seeking to use the EDI interface for pre-ordering will have to migrate from the TAG interface to an alternative interface only to migrate again to the EDI interface.⁴⁸⁰ Covad's claim appears to be inaccurate. Under BellSouth's current plans, no competitive carrier would have to transition to an alternative interface prior to the availability of an EDI pre-ordering interface.⁴⁸¹ We therefore reject Covad's claim and do not find that it warrants checklist noncompliance.

141. *Access to Loop Qualification Information.* We find, as did the state commissions,⁴⁸² that BellSouth provides competitive LECs with access to loop qualification information consistent with the requirements of the *UNE Remand Order*.⁴⁸³ Specifically, we find

⁴⁷⁷ The Competitive LEC Service Order Tracking System (CSOTS) alerts competitive LECs to the presence of a PSO for one of their customers, but only allows the competitive LEC access to the actual details of the PSO if in fact the PSO was placed by the competitive LEC. See ITC^DeltaCom Comments at 1-2 n.1; BellSouth Ainsworth Reply Aff. at paras. 38-39; BellSouth Stacy Reply Aff. at para. 170; see also *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9077 n.392. BellSouth also states that its legacy systems are common to both retail and wholesale competitive LEC services and need to be accessed by both BellSouth retail and wholesale representatives to handle issues dealing with an order already in progress. See BellSouth August 14 OSS and Loops *Ex Parte* Letter at 7.

⁴⁷⁸ BellSouth Ainsworth Reply Aff. at para. 39.

⁴⁷⁹ Covad Comments at 17. The TAG gateway allows Covad to determine at the pre-ordering stage whether or not it can provide a customer with the DSL services that they want. *Id.*

⁴⁸⁰ Covad Comments at 18.

⁴⁸¹ BellSouth explains that it will make the current version of TAG available until May 2003, and a later version of TAG (scheduled to be released in December 2002) available until December 2003. BellSouth Stacy Reply Aff. at para. 174. BellSouth plans to make EDI support for pre-ordering available in March 2003, before BellSouth discontinues support for the current version of the TAG interface. BellSouth Stacy Reply Aff. at paras. 180-81.

⁴⁸² Alabama Commission Comments at 211; Kentucky Commission Comments at 21; Mississippi Commission Comments at 3; North Carolina Commission Comments at 132-33; South Carolina Commission Comments at 1-3.

⁴⁸³ The Commission's rules require BellSouth to provide competitors with access to all loop qualification information in its databases or internal records in the same time intervals that it is available to any BellSouth (continued....)

that BellSouth provides competitors with access to all of the same detailed information about the loop that is available to itself and in the same time frame as any of its personnel could obtain it.⁴⁸⁴

142. Covad claims that inaccuracies in the loop qualification information in BellSouth's Loop Facilities Assignment and Control System (LFACS) database discriminate against competitive LECs.⁴⁸⁵ We reject this argument. The Commission has never required incumbent LECs to ensure the accuracy of their loop qualification databases. Instead, the Commission requires that, to the extent the incumbent LEC has compiled loop qualification information for itself, it is obligated to provide competitive LECs with nondiscriminatory access to the same information.⁴⁸⁶ Because BellSouth complies with this requirement, we find that Covad's claims regarding the alleged inaccuracy of BellSouth's LFACS database, even if true, do not warrant a finding of noncompliance with checklist item 2.⁴⁸⁷

143. We also reject Covad's claim that BellSouth's refusal to provide it with sufficient information to enable its technicians to locate demarcation points for the UCL-ND warrants a finding of checklist noncompliance.⁴⁸⁸ The record makes clear that BellSouth's records typically do not set forth the precise location of the demarcation point for a given loop.⁴⁸⁹ Instead, those records contain more general information that BellSouth's technicians are able to access to help them locate a particular demarcation point.⁴⁹⁰ BellSouth states that, upon request, it provides Covad with the same general information regarding the location of demarcation points that is

(Continued from previous page) _____

personnel, regardless of whether BellSouth personnel actually access that information. *See UNE Remand Order*, 15 FCC Rcd at 3885-86, paras. 427-31.

⁴⁸⁴ *See* BellSouth Stacy Aff. at paras. 241-50; BellSouth Stacy Reply Aff. at paras. 185-90; *see also Verizon Massachusetts Order*, 15 FCC Rcd at 9016-17, para. 54.

⁴⁸⁵ Covad Comments at 23, 31-32.

⁴⁸⁶ *See UNE Remand Order*, 15 FCC Rcd at 3886, para. 429.

⁴⁸⁷ We note that BellSouth disputes Covad's allegation that BellSouth's LFACS database is highly inaccurate. *See* BellSouth Stacy Reply Aff. at para. 185; Covad Comments at 31-32. We find it unnecessary to resolve this dispute because, as BellSouth has shown, competitive LECs have nondiscriminatory access to the information in that database.

⁴⁸⁸ Covad Comments at 24-26. Under the Commission's rules, a "demarcation point" is "the point of demarcation and/or interconnection between the communications facilities of a provider of wireline telecommunications, and terminal equipment, protective apparatus or wiring at a subscriber's premises." 47 C.F.R. § 68.3. In multi-tenant buildings, demarcation points may be located in telecommunications closets or equipment rooms where numerous loops terminate or in individual office suites or apartments. 47 C.F.R. § 68.105(b), (d).

⁴⁸⁹ BellSouth Application Reply App., Vol. 2, Tab F, Reply Affidavit of W. Keith Milner (BellSouth Milner Reply Aff.) at paras. 3-4.

⁴⁹⁰ *See id.* at para. 3.

available to BellSouth's own employees and in the same timeframe.⁴⁹¹ Covad thus has access to the information regarding demarcation point locations that is available to BellSouth in accordance with the *UNE Remand Order*. Therefore, we find that Covad's claim does not raise any issue regarding checklist noncompliance.⁴⁹²

c. Ordering

144. In this section, we address BellSouth's ability to provide competing carriers with access to the OSS functions necessary for placing wholesale and resale orders. We find, as did the state commissions,⁴⁹³ that BellSouth provides carriers in each of the five states with nondiscriminatory access to its ordering systems. In the following discussion, we address the OSS issues primarily in dispute in this application: order confirmation notices; reject notices; flow-through; order completion notices; and jeopardy notices.

(i) Order Confirmation Notices

145. Based on the evidence in the record, we conclude, as did the state commissions,⁴⁹⁴ that BellSouth generally provides timely order confirmation notices to competitive LECs in each of the five states.⁴⁹⁵ BellSouth demonstrates that it generally meets or exceeds the relevant benchmark for each type of service in the months most relevant to this application.⁴⁹⁶ During the

⁴⁹¹ BellSouth Ainsworth Reply Aff. at para. 41; BellSouth Milner Reply Aff. at paras. 3-4. BellSouth adds that it is currently conducting a region-wide trial under which it will provide Covad with demarcation point locations for all UCL-ND loops even if their provisioning does not otherwise require a dispatch. BellSouth Milner Reply Aff. at para. 6.

⁴⁹² We note that Covad also claims that BellSouth's practices with regard to demarcation point information violate BellSouth's interconnection agreement with Covad. Covad Comments at 25. If Covad believes that BellSouth's practices in this area violate these parties' interconnection agreement, it is more appropriate for Covad to seek redress before the state commissions under section 252 of the Act rather than in this proceeding.

⁴⁹³ Alabama Commission Comments at 152-61; Kentucky Commission Comments at 21-27; Mississippi Commission Comments at 11; North Carolina Commission Comments at 133-39; South Carolina Commission Comments at 1-3.

⁴⁹⁴ See Alabama Commission Comments at 159; Kentucky Commission Comments at 21-27; Mississippi Commission Comments at 11-12; North Carolina Commission Comments at 135-36; South Carolina Commission Comments at 1-3.

⁴⁹⁵ BellSouth submits performance data showing firm order confirmation (FOC) Timeliness disaggregated by: (1) fully mechanized orders (i.e., orders that flow through); (2) partially mechanized orders that are submitted electronically but require some manual processing; and (3) manually submitted and processed orders. See BellSouth Varner Aff. at para. 170.

⁴⁹⁶ See Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.1.9 (FOC Timeliness – Mechanized); Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.1.12 (FOC Timeliness – Partially Mechanized); Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.1.13 (FOC Timeliness – Non-Mechanized); Alabama/Kentucky/Mississippi/North Carolina/South Carolina A.1.9 (FOC Timeliness – Mechanized); Alabama/Kentucky/Mississippi/North Carolina/South Carolina A.1.12 (FOC Timeliness – Partially Mechanized); Alabama/Kentucky/Mississippi/North Carolina/South Carolina A.1.13 (FOC Timeliness – Non-Mechanized).

critical that a competing carrier is able to accomplish pre-ordering activities in a manner no less efficient and responsive than the incumbent.¹⁰² Most of the pre-ordering activities that must be undertaken by a competing carrier to order resale services and UNEs from the incumbent are analogous to the activities a BOC must accomplish to furnish service to its own customers. For these pre-ordering functions, a BOC must demonstrate that it provides requesting carriers access that enables them to perform pre-ordering functions in substantially the same time and manner as its retail operations.¹⁰³ For those pre-ordering functions that lack a retail analogue, a BOC must provide access that affords an efficient competitor a meaningful opportunity to compete.¹⁰⁴ In prior orders, the Commission has emphasized that providing pre-ordering functionality through an application-to-application interface is essential in enabling carriers to conduct real-time processing and to integrate pre-ordering and ordering functions in the same manner as the BOC.¹⁰⁵

(i) Access to Loop Qualification Information

35. In accordance with the *UNE Remand Order*,¹⁰⁶ the Commission requires incumbent carriers to provide competitors with access to all of the same detailed information about the loop that is available to the incumbents,¹⁰⁷ and in the same time frame, so that a competing carrier can make an independent judgment at the pre-ordering stage about whether an end user loop is capable of supporting the advanced services equipment the competing carrier intends to install.¹⁰⁸ Under the *UNE Remand Order*, the relevant inquiry is not whether a BOC's retail arm accesses such underlying information but whether such information exists anywhere in

¹⁰² *Bell Atlantic New York Order*, 15 FCC Rcd at 4014, para. 129.

¹⁰³ *Id.*; see also *BellSouth South Carolina Order*, 13 FCC Rcd at 623-29 (concluding that failure to deploy an application-to-application interface denies competing carriers equivalent access to pre-ordering OSS functions).

¹⁰⁴ *Bell Atlantic New York Order*, 15 FCC Rcd at 4014, para. 129.

¹⁰⁵ See *id.* at 4014, para. 130; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20661-67, para. 105.

¹⁰⁶ *UNE Remand Order*, 15 FCC Rcd at 3885, para. 426 (determining “that the pre-ordering function includes access to loop qualification information”).

¹⁰⁷ See *id.* At a minimum, a BOC must provide (1) the composition of the loop material, including both fiber and copper; (2) the existence, location and type of any electronic or other equipment on the loop, including but not limited to, digital loop carrier or other remote concentration devices, feeder/distribution interfaces, bridge taps, load coils, pair-gain devices, disturbers in the same or adjacent binder groups; (3) the loop length, including the length and location of each type of transmission media; (4) the wire gauge(s) of the loop; and (5) the electrical parameters of the loop, which may determine the suitability of the loop for various technologies. *Id.*

¹⁰⁸ As the Commission has explained in prior proceedings, because characteristics of a loop, such as its length and the presence of various impediments to digital transmission, can hinder certain advanced services technologies, carriers often seek to “pre-qualify” a loop by accessing basic loop makeup information that will assist carriers in ascertaining whether the loop, either with or without the removal of the impediments, can support a particular advanced service. See *id.*, 15 FCC Rcd at 4021, para. 140.

a BOC's back office and can be accessed by any of a BOC's personnel.¹⁰⁹ Moreover, a BOC may not "filter or digest" the underlying information and may not provide only information that is useful in provisioning of a particular type of xDSL that a BOC offers.¹¹⁰ A BOC must also provide loop qualification information based, for example, on an individual address or zip code of the end users in a particular wire center, NXX code or on any other basis that the BOC provides such information to itself. Moreover, a BOC must also provide access for competing carriers to the loop qualifying information that the BOC can itself access manually or electronically. Finally, a BOC must provide access to loop qualification information to competitors within the same time intervals it is provided to the BOC's retail operations or its advanced services affiliate.¹¹¹ As the Commission determined in the *UNE Remand Order*, however, "to the extent such information is not normally provided to the incumbent's retail personnel, but can be obtained by contacting back office personnel, it must be provided to requesting carriers within the same time frame that any incumbent personnel are able to obtain such information."¹¹²

c. Ordering

36. Consistent with section 271(c)(2)(B)(ii), a BOC must demonstrate its ability to provide competing carriers with access to the OSS functions necessary for placing wholesale orders. For those functions of the ordering systems for which there is a retail analogue, a BOC must demonstrate, with performance data and other evidence, that it provides competing carriers with access to its OSS in substantially the same time and manner as it provides to its retail operations. For those ordering functions that lack a direct retail analogue, a BOC must demonstrate that its systems and performance allow an efficient carrier a meaningful opportunity to compete. As in prior section 271 orders, the Commission looks primarily at the applicant's ability to return order confirmation notices, order reject notices, order completion notices and jeopardies, and at its order flow-through rate.¹¹³

¹⁰⁹ *UNE Remand Order*, 15 FCC Rcd at 3885-3887, paras. 427-431 (noting that "to the extent such information is not normally provided to the incumbent's retail personnel, but can be obtained by contacting back office personnel, it must be provided to requesting carriers within the same time frame that any incumbent personnel are able to obtain such information.").

¹¹⁰ *See SWBT Kansas Oklahoma Order*, 16 FCC Rcd at 6292-93, para. 121.

¹¹¹ *Id.*

¹¹² *UNE Remand Order*, 15 FCC Rcd at 3885-3887, paras. 427-31.

¹¹³ *See SWBT Texas Order*, 15 FCC Rcd at 18438, para. 170; *Bell Atlantic New York Order*, 15 FCC Rcd at 4035-39, paras. 163-66. The Commission examines (i) order flow-through rates, (ii) jeopardy notices and (iii) order completion notices using the "same time and manner" standard. The Commission examines order confirmation notices and order rejection notices using the "meaningful opportunity to compete" standard.

TAB 2

(Vermont 271 Order, App. D ¶ 35)

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Application by Verizon New England Inc.,)	
Bell Atlantic Communications, Inc. (d/b/a)	CC Docket No. 02-7
Verizon Long Distance), NYNEX Long)	
Distance Company (d/b/a Verizon Enterprise)	
Solutions), Verizon Global Networks Inc.,)	
and Verizon Select Services Inc., for)	
Authorization To Provide In-Region,)	
InterLATA Services in Vermont)	

MEMORANDUM OPINION AND ORDER

Adopted: April 17, 2002

Released: April 17, 2002

By the Commission: Commissioner Copps issuing a statement.

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prior orders, the Commission has emphasized that providing pre-ordering functionality through an application-to-application interface is essential in enabling carriers to conduct real-time processing and to integrate pre-ordering and ordering functions in the same manner as the BOC.¹⁰⁴

(i) Access to Loop Qualification Information

35. In accordance with the *UNE Remand Order*,¹⁰⁵ the Commission requires incumbent carriers to provide competitors with access to all of the same detailed information about the loop that is available to the incumbents,¹⁰⁶ and in the same time frame, so that a competing carrier can make an independent judgment at the pre-ordering stage about whether an end user loop is capable of supporting the advanced services equipment the competing carrier intends to install.¹⁰⁷ Under the *UNE Remand Order*, the relevant inquiry is not whether a BOC's retail arm accesses such underlying information but whether such information exists anywhere in a BOC's back office and can be accessed by any of a BOC's personnel.¹⁰⁸ Moreover, a BOC may not "filter or digest" the underlying information and may not provide only information that is useful in provisioning of a particular type of xDSL that a BOC offers.¹⁰⁹ A BOC must also provide loop qualification information based, for example, on an individual address or zip code of the end users in a particular wire center, NXX code or on any other basis that the BOC provides such information to itself. Moreover, a BOC must also provide access for competing carriers to the loop qualifying information that the BOC can itself access manually or electronically. Finally, a BOC must provide access to loop qualification information to competitors within the same time intervals it is provided to the BOC's retail operations or its

¹⁰⁴ See *id.* at 4014, para. 130; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20661-67, para. 105.

¹⁰⁵ *UNE Remand Order*, 15 FCC Rcd at 3885, para. 426 (determining "that the pre-ordering function includes access to loop qualification information").

¹⁰⁶ See *id.* At a minimum, a BOC must provide (1) the composition of the loop material, including both fiber and copper; (2) the existence, location and type of any electronic or other equipment on the loop, including but not limited to, digital loop carrier or other remote concentration devices, feeder/distribution interfaces, bridge taps, load coils, pair-gain devices, disturbers in the same or adjacent binder groups; (3) the loop length, including the length and location of each type of transmission media; (4) the wire gauge(s) of the loop; and (5) the electrical parameters of the loop, which may determine the suitability of the loop for various technologies. *Id.*

¹⁰⁷ As the Commission has explained in prior proceedings, because characteristics of a loop, such as its length and the presence of various impediments to digital transmission, can hinder certain advanced services technologies, carriers often seek to "pre-qualify" a loop by accessing basic loop makeup information that will assist carriers in ascertaining whether the loop, either with or without the removal of the impediments, can support a particular advanced service. See *id.*, 15 FCC Rcd at 4021, para. 140.

¹⁰⁸ *UNE Remand Order*, 15 FCC Rcd at 3885-3887, paras. 427-431 (noting that "to the extent such information is not normally provided to the incumbent's retail personnel, but can be obtained by contacting back office personnel, it must be provided to requesting carriers within the same time frame that any incumbent personnel are able to obtain such information.").

¹⁰⁹ See *SWBT Kansas Oklahoma Order*, 16 FCC Rcd at 6292-93, para. 121.

advanced services affiliate.¹¹⁰ As the Commission determined in the *UNE Remand Order*, however, “to the extent such information is not normally provided to the incumbent’s retail personnel, but can be obtained by contacting back office personnel, it must be provided to requesting carriers within the same time frame that any incumbent personnel are able to obtain such information.”¹¹¹

c. Ordering

36. Consistent with section 271(c)(2)(B)(ii), a BOC must demonstrate its ability to provide competing carriers with access to the OSS functions necessary for placing wholesale orders. For those functions of the ordering systems for which there is a retail analogue, a BOC must demonstrate, with performance data and other evidence, that it provides competing carriers with access to its OSS in substantially the same time and manner as it provides to its retail operations. For those ordering functions that lack a direct retail analogue, a BOC must demonstrate that its systems and performance allow an efficient carrier a meaningful opportunity to compete. As in prior section 271 orders, the Commission looks primarily at the applicant’s ability to return order confirmation notices, order reject notices, order completion notices and jeopardies, and at its order flow-through rate.¹¹²

d. Provisioning

37. A BOC must provision competing carriers’ orders for resale and UNE-P services in substantially the same time and manner as it provisions orders for its own retail customers.¹¹³ Consistent with the approach in prior section 271 orders, the Commission examines a BOC’s provisioning processes, as well as its performance with respect to provisioning timeliness (i.e., missed due dates and average installation intervals) and provisioning quality (i.e., service problems experienced at the provisioning stage).¹¹⁴

e. Maintenance and Repair

¹¹⁰ *Id.*

¹¹¹ *UNE Remand Order*, 15 FCC Rcd at 3885-3887, paras. 427-31.

¹¹² See *SWBT Texas Order*, 15 FCC Rcd at 18438, para. 170; *Bell Atlantic New York Order*, 15 FCC Rcd at 4035-39, paras. 163-66. The Commission examines (i) order flow-through rates, (ii) jeopardy notices and (iii) order completion notices using the “same time and manner” standard. The Commission examines order confirmation notices and order rejection notices using the “meaningful opportunity to compete” standard.

¹¹³ See *Bell Atlantic New York*, 15 FCC Rcd at 4058, para. 196. For provisioning timeliness, the Commission looks to missed due dates and average installation intervals; for provisioning quality, the Commission looks to service problems experienced at the provisioning stage.

¹¹⁴ *Id.*

TAB 3

(Massachusetts 271 Order ¶¶ 54-69)

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Application of Verizon New England Inc., Bell)	
Atlantic Communications, Inc. (d/b/a Verizon)	
Long Distance), NYNEX Long Distance)	CC Docket No. 01-9
Company (d/b/a Verizon Enterprise Solutions))	
And Verizon Global Networks Inc.,)	
For Authorization to Provide In-Region,)	
InterLATA Services in Massachusetts)	

MEMORANDUM OPINION AND ORDER

Adopted: April 16, 2001

Released: April 16, 2001

By the Commission: Chairman Powell and Commissioner Ness issuing separate statements;
Commissioner Furchtgott-Roth concurring and issuing a statement; and Commissioner Tristani
dissenting and issuing a statement.

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their customers as efficiently and at the same level of quality as Verizon serves its own customers.¹⁵³ Verizon's performance data demonstrate that Verizon's EDI interface has met or exceeded the relevant benchmarks for interface response time and availability in each of the last four months, with only a few scattered exceptions of negligible competitive impact.¹⁵⁴ KPMG's functional and volume tests of Verizon's LSOG 2 EDI pre-order interface provide additional confirmation of Verizon's satisfactory performance with respect to the availability and response times of its pre-order functionality.¹⁵⁵ We therefore conclude that Verizon's interfaces are available in a stable and consistent manner and afford an efficient competitor a meaningful opportunity to compete.

(ii) Access to Loop Qualification Information

54. *Background.* As the Commission required of SWBT in the recent *SWBT Kansas/Oklahoma Order*,¹⁵⁶ we require Verizon to demonstrate that it provides access to loop qualification information in a manner consistent with the requirements of the *UNE Remand Order*.¹⁵⁷ In particular, we require Verizon to provide access to loop qualification information as part of the pre-ordering functionality of OSS. In the *UNE Remand Order*, the Commission

¹⁵³ See *Bell Atlantic New York Order*, 15 FCC Rcd at 4025, para. 145, and 4029, para. 154.

¹⁵⁴ See Verizon Carrier-to-Carrier Performance Standards and Reports, September 2000 – December 2000. The PO 1 series of metrics measures the response times of Verizon's OSS in performing a number of pre-order transactions. Verizon's EDI performance under this series of metrics met or exceeded the applicable benchmark in all four months, with the following exception. In October 2000, Verizon's average response time to reject EDI pre-order queries was 0.68 seconds longer than the applicable benchmark (PO 1-07). We do not deem this delay in response time of less than one second in one month's performance to be competitively significant. The PO 2 series of metrics measures the availability of Verizon's OSS interfaces. While Verizon may not have met the benchmark standard of 100 percent, 24 hour availability for some of the PO 2 metrics measuring EDI pre-order interface availability from September through December 2000, Verizon's performance data under these metrics show no lower than 99.88 percent availability of its EDI interface during this four-month period. We do not consider the 0.12 percent unavailability of Verizon's interface to be competitively significant.

¹⁵⁵ See KPMG Final Report at 47-55. Specifically, KPMG concluded that LSOG 2 EDI pre-order interface capability was consistently available during 100 percent of scheduled hours of operation (Test POP-1-1-1). KPMG found that, following system and documentation enhancements, 98 percent of pre-order transactions submitted as part of its functional test received responses (POP-1-2-1). For its volume test, 99.9 percent of pre-order transactions received responses (POP-1-3-1). For pre-order transactions for which Verizon retail analogue data were available, average response times for transactions submitted by KPMG as part of its functional evaluation met the associated carrier-to-carrier benchmarks, with the exception of pre-order product and service availability (PSA) transactions. However, 95 percent of KPMG's total PSA transactions during its functional evaluation and 99 percent of such transactions during its volume test received responses within 10 seconds (POP-1-4-2, POP-1-4-3, POP-1-5-2). See also KPMG Final Report at 69 (Table 1-18) (volume evaluation of LSOG 2 EDI pre-order response timeliness).

¹⁵⁶ SWBT's section 271 application for Kansas and Oklahoma was the first such application reviewed for its compliance with the *UNE Remand Order* requirements for nondiscriminatory access to loop qualification information. See *SWBT Kansas/Oklahoma Order* at paras. 121-29.

¹⁵⁷ See *UNE Remand Order*, 15 FCC Rcd at 3885-87, paras. 427-31.

required incumbent carriers to provide competitors with access to all of the same detailed information about the loop available to themselves, and in the same time frame as any of their personnel could obtain it, so that a requesting carrier could make an independent judgment at the pre-ordering stage about whether a requested end user loop is capable of supporting the advanced services equipment the requesting carrier intends to install. Under the *UNE Remand Order*, Verizon must provide carriers with the same underlying information that it has in any of its own databases or internal records.¹⁵⁸ The relevant inquiry as required by the *UNE Remand Order* is not whether Verizon's retail arm or advanced services affiliate has access to such underlying information but whether such information exists anywhere in Verizon's back office and can be accessed by any of Verizon's personnel.¹⁵⁹ Moreover, Verizon may not "filter or digest" the underlying information and may not provide only information that is useful in the provision of a particular type of xDSL that Verizon offers.¹⁶⁰ Verizon must provide loop qualification information based, for example, on an individual address or zip code of the end users in a particular wire center, NXX code or on any other basis that Verizon provides such information to itself. Verizon must also provide access for competing carriers to the loop qualifying information that Verizon can itself access manually or electronically. Finally, Verizon must provide access to loop qualification information to competitors "within the same time frame that any incumbent personnel are able to obtain such information," including any personnel in its advanced services affiliate, Verizon Advanced Data, Inc. (VADI).¹⁶¹

55. Currently, Verizon provides four ways for competing carriers to obtain loop make-up information: (1) mechanized loop qualification based on information in its LiveWire database; (2) access to loop make-up information in its Loop Facility Assignment and Control System (LFACS) database; (3) manual loop qualification; and (4) engineering record requests. As we discuss in more detail below, competitors can request loop make-up information from the LFACS and LiveWire databases, or can request that Verizon perform a manual search of its paper records to determine whether a loop is capable of supporting advanced technologies.¹⁶²

¹⁵⁸ See *id.* at 3885, para. 427. For example, to the extent Verizon personnel may access any such information, Verizon must provide competitors with information regarding: (1) the composition of the loop material, including both fiber and copper; (2) the existence, location and type of any electronic or other equipment on the loop, including but not limited to, digital loop carrier or other remote concentration devices, feeder/distribution interfaces, bridge taps, load coils, pair-gain devices, disturbers in the same or adjacent binder groups; (3) the loop length, including the length and location of each type of transmission media; (4) the wire gauge(s) of the loop; and (5) the electrical parameters of the loop, which may determine the suitability of the loop for various technologies. See *id.*

¹⁵⁹ See *id.* at 3886, para. 430.

¹⁶⁰ See *id.* at 3886, para. 428. For example, an incumbent LEC may not provide a "green, yellow, or red" indicator of whether a loop qualifies for its particular xDSL offering in lieu of underlying loop make-up information in its possession. See *id.*; see also *infra* at para. 67.

¹⁶¹ See *UNE Remand Order*, 15 FCC Rcd at 3885-87, paras. 427-31.

¹⁶² See *SWBT Kansas/Oklahoma Order* at para. 122.

56. Verizon's mechanized loop qualification database, known as LiveWire, provides real-time access on a pre-order basis to the loop qualification information VADI's retail personnel use to qualify an end-user customer's line for VADI's ADSL service.¹⁶³ Competing carriers are able to access the LiveWire mechanized database via the Web GUI, CORBA and EDI interfaces. Verizon states that LiveWire provides information on whether a loop is qualified for ADSL service, the length of the loop and, if the loop does not qualify for ADSL service, data on why the loop does not qualify (*e.g.*, presence of Digital Loop Carrier, T-1 in the binder group, or load coils).¹⁶⁴ The information contained in the LiveWire database is "theoretical" or "sampled" loop information, *i.e.*, information about a test sample of loops in a given distribution terminal that is attributed to the rest of the loops in the same terminal.¹⁶⁵ According to Verizon, as of July 2000, the mechanized database included information about loops in 93 percent of Verizon's central offices in Massachusetts with collocation arrangements in place, which covered 98 percent of the access lines in Massachusetts with collocation.¹⁶⁶

57. Competing carriers are also able to use an interim pre-order process to access any loop make-up information stored in Verizon's LFACS database.¹⁶⁷ The loop make-up information contained in LFACS includes actual, loop-specific information.¹⁶⁸ Within 24 hours of a competitive carrier querying LFACS for loop make-up information, Verizon returns all of the

¹⁶³ See Verizon Massachusetts I Application App. A, Vol. 1, Declaration of Paul A. Lacouture and Virginia P. Rueterholz at para. 108 (Verizon Massachusetts I Lacouture/Rueterholz Decl.). See also Verizon Massachusetts I McLean/Wierzbicki Decl. at para. 20.

¹⁶⁴ See Verizon Massachusetts I Lacouture/Rueterholz Decl. at para. 108.

¹⁶⁵ See Letter from Dolores May, Executive Director Federal Regulatory, Verizon, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-176 (filed November 3, 2000) (Verizon November 3 *Ex Parte* Letter). Verizon tested a minimum of 10 pairs per hundred pairs in a terminal, or a fraction of 100 pairs if less than a 100 pairs were in the terminal tested. See *id.*

¹⁶⁶ See Verizon Massachusetts I Lacouture/Rueterholz Decl. at para. 108. As an alternative to mechanized loop qualification through the LiveWire database, Verizon states that it also provides competitors with access to a server containing files indicating the working telephone numbers in end offices that have been qualified for Verizon's retail ADSL product. Verizon states that it plans to add loop length information to the files in February 2001. See Verizon Massachusetts II Lacouture/Rueterholz Decl. at para. 33.

¹⁶⁷ According to Verizon, LFACS contains loop make-up information for about 10 percent of Verizon's Massachusetts terminal locations. See Verizon Massachusetts I Reply at 37. Verizon has not provided specific information about the terminals for which LFACS does contain information. Thus, to the extent those terminals serve a greater number of loops (for example, terminals in densely populated urban areas), the 10 percent of terminals for which Verizon has stated LFACS contains loop make-up information could actually reflect a significantly higher proportion of Verizon's loops in Massachusetts than 10 percent. See Verizon November 3 *Ex Parte* Letter (indicating that terminals vary greatly in the number of loops they serve).

¹⁶⁸ LFACS contains loop-specific information including: segment length by gauge; bridge tap location; bridge tap length; loop composition (*e.g.*, copper or fiber); existence of digital single subscriber carrier; the existence, spacing, type and quantity of load coils; and the presence of DLC. See Letter from Dolores May, Executive Director Federal Regulatory, Verizon, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 01-9, Attach. D, at 6 (filed February 2, 2001) (Verizon February 2 *Ex Parte* Letter).

LFACS information on the loop in the remarks field of the pre-order interface used to make the query.¹⁶⁹ In addition, through its change management process, Verizon has begun implementing a permanent process for providing this information in real-time and in electronically parsed form through its LSOG 4 and LSOG 5 pre-order interfaces, with availability expected by October 2001.¹⁷⁰

58. Verizon also provides a manual loop qualification process. According to Verizon, this manual process provides competing carriers with the same types of information ordinarily available through the mechanized loop qualification process.¹⁷¹ To conduct a manual loop qualification, Verizon's Loop Qualification Center (LQC) first examines information from the LiveWire and LFACS databases, and performs a mechanized line test (MLT) on the loop to verify the actual loop length.¹⁷² If this information is inconclusive, engineers in Verizon's Facilities Management Center examine paper records to determine the loop length, whether or not the loop is qualified and, if it is not, the reasons why.¹⁷³ Unlike loop qualification through the "real time" LiveWire mechanized database, which is designed to return loop qualification information within seconds when queried, the manual qualification process has a standard completion interval of three business days between submission of a request for manual loop qualification and the return of the requested loop information to the competing carrier.¹⁷⁴ Currently, competing carriers

¹⁶⁹ See Verizon February 2 *Ex Parte* Letter at 3-4. Verizon provides evidence that it is consistently meeting its target of returning LFACS loop make-up information within 24 hours. See Verizon Massachusetts II Reply, App. A, Tab 1, Attach. C (showing 100 percent of LFACS queries receiving responses within 24 hours for February 2001). As described below, requesting carriers generally receive LFACS loop information within 2 hours of submitting a request. See *infra* at para. 61, n.183.

¹⁷⁰ See Verizon February 2 *Ex Parte* Letter at 8. Verizon's change management proposal for this new transaction treats it as a "Type 2" or regulatory change. See Verizon Massachusetts II Application at 14-15.

¹⁷¹ See Verizon Massachusetts I Lacouture/Ruesterholz Decl. at para. 109. See also Letter from Dolores May, Executive Director Federal Regulatory, Verizon, to Eric Einhorn, Common Carrier Bureau, Federal Communications Commission, CC Docket No. 00-176 at 2 (filed October 17, 2000) (Verizon October 17 *Ex Parte* Letter).

¹⁷² The loop lengths returned by the MLT in the manual qualification process correspond to the actual metallic loop lengths of discrete cable pairs to end users, as opposed to the theoretical loop lengths returned by LiveWire. Loop lengths in LiveWire are based on binder group sampling, for which Verizon has conducted MLT tests on a sample of loops serving a given distribution terminal. See Verizon November 3 *Ex Parte* Letter. See also Letter from Jason Oxman, Senior Government Affairs Counsel, Covad Communications Company, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-176 at 7, n.11 (filed October 26, 2000) (Covad October 26 *Ex Parte* Letter).

¹⁷³ See Verizon October 17 *Ex Parte* Letter at 3-4 (describing Verizon's manual loop qualification process). This paper records search performed as part of the manual loop qualification process yields a more limited set of loop information than the engineering query discussed below. See *infra* n.174 and para. 59.

¹⁷⁴ See Verizon Massachusetts I Lacouture/Ruesterholz Decl. at para. 109. See also Verizon Massachusetts I Application App. A, Vol. 3, Declaration of Elaine M. Guerard and Julie A. Canny at para. 78 (Verizon Massachusetts I Guerard/Canny Decl.). If the manual process indicates a loop is qualified for the requested service, Verizon provides loop-specific information about the length of the line based on MLT, the presence of load coils or bridge tap, and the presence of T-1 in the binder group. If the loop is not qualified, Verizon returns a (continued....)

request manual loop qualification as part of the OSS ordering function by ordering an xDSL loop and indicating in the Local Service Request (LSR) order form that a manual qualification is required. Verizon has begun implementing access to manual loop qualification as a pre-order function. Detailed specifics for this pre-order transaction are being addressed in Verizon's change management process, with complete implementation expected in October 2001.¹⁷⁵

59. Finally, Verizon, through an engineering record request, provides additional types of loop make-up information not returned through the mechanized and manual loop qualification processes. Verizon indicates that competitors may request this engineering query on a pre-order basis.¹⁷⁶ To conduct this engineering query, Verizon's Facilities Management Center conducts a search of loop inventory and paper records. The additional information provided through an engineering query includes the exact locations of load coils, the exact locations and lengths of bridge taps, as well as actual cable gauges and the length of each gauge.¹⁷⁷ According to Verizon, this information is more detailed than the information returned in response to a manual loop qualification request.¹⁷⁸ Furthermore, the engineering query provides loop make-up information for loops not in the LFACS database.¹⁷⁹ The engineering query carries a standard interval of 72 hours for performing the engineering record review.¹⁸⁰ These queries appear to be seldom requested; Verizon performed only 15 engineering queries in Massachusetts between January and June 2000, whereas it performed approximately 11,700 manual loop qualifications in the same period.¹⁸¹

60. *Discussion.* Based on this evidence, we conclude that Verizon demonstrates that it offers nondiscriminatory access to OSS pre-ordering functions associated with determining
(Continued from previous page) _____

"query" notice indicating why the loop is not qualified for the requested service. *See* Verizon October 17 *Ex Parte* Letter at 3-4 (describing Verizon's manual loop qualification process).

¹⁷⁵ *See* Verizon February 2 *Ex Parte* Letter at 4-8. Verizon's change management proposal for this new transaction treats it as a "Type 2" or regulatory change. *See* Verizon Massachusetts II Application at 14-15.

¹⁷⁶ Verizon indicates that, using a manually submitted form, competitors may conduct engineering record requests on a pre-order basis. *See* Letter from Dee May, Executive Director Federal Regulatory, Verizon, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 01-9 (filed March 16, 2001); *see also* "Engineering Query Process Description," at http://128.11.40.241/east/wholesale/html/pdfs/engineering_queryrequest.pdf.

¹⁷⁷ *See* Verizon Massachusetts I Lacouture/Ruesterholz Decl. at para. 110. *See also* Verizon October 17 *Ex Parte* Letter at 4.

¹⁷⁸ *See* Verizon October 17 *Ex Parte* Letter at 4.

¹⁷⁹ *See supra* n.167.

¹⁸⁰ *See* Massachusetts Department Massachusetts I Comments at 293.

¹⁸¹ *See* Verizon Massachusetts I Application App. B., Vol. 34a-b, Tab 443 at 657 (Verizon response to DTE-WCOM-4-11 information request). One commenter indicates that the engineering query is seldom requested due to its high cost, at \$123 per query. *See* Rhythms Massachusetts I Reply App. A, Declaration of Robert Williams at para. 13 (Rhythms Massachusetts I Williams Reply Decl.).

whether a loop is capable of supporting xDSL advanced technologies. We reject commenters' various assertions that Verizon's loop make-up information processes do not comply with its *UNE Remand* obligations. These complaints fall into three categories. First, Covad complains that deficiencies in the interim LFACS process render Verizon's loop information processes noncompliant with the checklist. Second, Rhythms and Covad complain that Verizon's manual loop qualification process is not part of the pre-ordering stage, contrary to the requirements of the *UNE Remand Order*. Finally, several commenters advance various other complaints that deficiencies in Verizon's loop information processes warrant a finding of noncompliance. For the reasons discussed below, we reject these claims.

61. *Interim LFACS Process.* We conclude, contrary to Covad's assertions, that Verizon's offering for LFACS loop make-up information complies with the checklist. Our conclusion is based on both the nature of Verizon's interim process for access to LFACS information coupled with its work in the formal change management process implementing enhanced permanent loop qualification processes.¹⁸² In addition, we are encouraged by Verizon's current plans to develop a permanent fix for loop qualification OSS by October 2001. With respect to the nature of the interim process, we find that Verizon is currently providing useful, detailed information to competing carriers concerning the ability of loops to support xDSL services and is doing so in reasonable time frames. Specifically, although Verizon states that it will return all queries for loop qualification information within 24 hours of receiving a request, in actuality, competitors are generally receiving this information within 2 hours.¹⁸³ Moreover, we find it significant that Verizon's interim loop qualification process is largely automated. For example, competitors are able to submit their loop information queries and receive responses to these queries through Verizon's electronic pre-order interfaces.¹⁸⁴

62. With respect to Verizon's work in the change management process, we find that Verizon has begun actively implementing enhancements to its loop qualification processes under a proposal that is detailed, well-developed, and subject to a prioritized time frame.¹⁸⁵ Extensive software development is required of both Verizon and competing carriers to implement Verizon's change management proposals for LFACS access. Importantly, we find that Verizon has initiated concrete and irreversible steps to implement these changes through its formal change management process. This is not a case, for example, where only a skeletal plan is being submitted to change management. Verizon's proposals provide competitors with comprehensive detail about the business rules and field format requirements of its new loop information processes. Implementation of these processes at a minimum requires extensive software development in

¹⁸² We note, for future applications, that not all interim processes and change management proposals may be sufficient to warrant a finding of checklist compliance.

¹⁸³ See Letter from Dee May, Executive Director Federal Regulatory, Verizon, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 01-9 (filed April 3, 2001).

¹⁸⁴ See Verizon February 2 *Ex Parte* Letter at 3.

¹⁸⁵ Verizon states that these system enhancements will be complete by October 2001. See Verizon February 2 *Ex Parte* Letter at 8.

Verizon's interface systems (Web GUI, EDI and CORBA), the Request Manager gateway system, the underlying systems (LFACS, LiveWire), and the data exchange between these systems.¹⁸⁶ Moreover, we recognize that change management is an appropriate and important step in implementing systems enhancements where, as here, such enhancements may substantially impact competing carriers' OSS.¹⁸⁷ In reaching our conclusion, we rely on the nature of Verizon's formal change management process in Massachusetts, which provides for substantial competing carrier input and participation and for oversight by the Massachusetts Department.¹⁸⁸ We also rely on the fact that Verizon has introduced its proposals as regulatory changes, subject to the prioritized implementation process for regulatory requirements.¹⁸⁹ Finally, we note that Verizon has established October 2001 as the expected completion date for its system enhancements.¹⁹⁰

63. Under these circumstances, we reject Covad's claim that checklist compliance is not met until the completion of the change management process.¹⁹¹ To find such would perversely incent competing carriers to delay implementation of improved OSS and BOCs to circumvent the change management process. Given these specific circumstances, we find that Verizon's processes for access to LFACS comply with the checklist. Verizon has an interim process for LFACS access in place, and is actively using the change management process in implementing a proposal that is detailed, well-developed, subject to a prioritized time frame and firm completion date, and carries substantial implications for competitors' OSS.

64. We also reject Covad's other arguments that Verizon's LFACS process fails to satisfy its *UNE Remand* obligations for the following reasons. Covad objects that competing

¹⁸⁶ See Verizon February 2 *Ex Parte* Letter at 5.

¹⁸⁷ As the Commission has previously recognized, "[c]ompeting carriers need information about and specifications for an incumbent's systems and interfaces in order to develop and modify their systems and procedures to access the incumbent's OSS functions." See *Bell Atlantic New York Order*, 15 FCC Rcd at 3999, para. 102. For competing carriers to successfully interface with and make use of Verizon's new loop information processes, they will need to conduct extensive development with respect to their own systems and interfaces. See Verizon February 2 *Ex Parte* Letter at 5. The Commission has recognized that the existence of an adequate change management process and evidence that the BOC has adhered to this process over time demonstrates that the BOC is adequately assisting competing carriers to use available OSS functions. See *Bell Atlantic New York Order*, 15 FCC Rcd at 4000, para. 102. As discussed below, we find Verizon's change management processes in Massachusetts to be satisfactory. See *infra* Part IV.A.2.h.

¹⁸⁸ See *infra* Part IV.A.2.h(i).

¹⁸⁹ See Verizon Massachusetts II Application at 14-15; see also Verizon Massachusetts I McLean/Wierzbicki Decl., Attach. S at 18, 36-39, 71-77 (timeline, process flow, and description of regulatory change process).

¹⁹⁰ We note that, while our analysis of Verizon's compliance relies in part on the enhancements discussed in Verizon's application, this Order does not address whether Verizon was in compliance with the requirements of the *UNE Remand Order* prior to adopting its interim process for access to LFACS and implementing additional enhancements through its change management process.

¹⁹¹ See Covad Massachusetts II Reply at 27.

carriers must wait 24 hours to receive LFACS loop make-up information under the interim process, whereas Verizon's personnel are able to access this information electronically "in an instant."¹⁹² As already explained, however, requesting carriers generally receive LFACS information through the interim process within 2 hours.¹⁹³ Covad also objects that the interim process does not provide loop information in electronically parsed form, to allow for integration between pre-ordering and ordering interfaces.¹⁹⁴ Verizon's interim process does, however, allow competitors to submit queries for and obtain LFACS loop information through Verizon's electronic pre-order interfaces.¹⁹⁵ Furthermore, with respect to both of these objections to the interim process, our finding of checklist compliance does not rely on Verizon's interim processes alone. Rather, as explained above, our conclusion rests on the nature of Verizon's interim processes for access to LFACS coupled with its work in change management enhancing this process. The permanent process for LFACS access will provide the functionality and features Covad seeks.¹⁹⁶ Until this permanent system enhancement is in place, Verizon has provided competing carriers with an adequate process for obtaining LFACS loop information quickly and electronically. Finally, Covad objects that Verizon does not return working telephone number or serving address information with the LFACS information it returns, making it more difficult for competitors to associate the information with a particular loop.¹⁹⁷ We find, however, that requesting carriers are able to associate LFACS loop information with working telephone numbers or serving area addresses, contrary to Covad's assertions.¹⁹⁸

65. *Manual Loop Qualification.* We also reject Rhythms' and Covad's complaints that Verizon has so far failed to develop a pre-ordering interface for manual loop qualification.¹⁹⁹ We find that this is insufficient to render Verizon's loop information offering to competitors noncompliant with the requirements of the *UNE Remand Order*. For the most part, the

¹⁹² See Covad Massachusetts II Comments at 33.

¹⁹³ See *supra* at para. 61, n.183.

¹⁹⁴ See Covad Massachusetts II Comments at 33.

¹⁹⁵ See Verizon February 2 *Ex Parte* Letter at 3.

¹⁹⁶ See *supra* at paras. 60-63; see also Verizon February 2 *Ex Parte* Letter at 4-5 and Attach. D. Verizon states that these system enhancements will be complete by October 2001, a schedule to which we expect Verizon to adhere. See Verizon February 2 *Ex Parte* Letter at 8.

¹⁹⁷ See Covad Massachusetts II Reply at 27.

¹⁹⁸ Verizon states that, if a competitive carrier's representative uses the end user's telephone number to identify the loop for which information is being sought, the LFACS loop information returned will be associated with that telephone number on that representative's "work list." Verizon also states that, if the representative uses the end user's address to identify the loop, Verizon will include that address along with the LFACS loop make-up information returned in the "remarks" field of the pre-order interface. See Letter from Dee May, Executive Director Federal Regulatory, Verizon, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 01-9 (filed April 4, 2001).

¹⁹⁹ See Rhythms Massachusetts I Comments at 33-34; Covad Massachusetts I Reply at 10.

information returned through the manual loop qualification process is already provided to competitors through other loop qualification processes that are available at the pre-ordering stage.²⁰⁰ The only information returned through manual loop qualification not otherwise available at the pre-ordering stage is the result of a loop-specific MLT test.²⁰¹ MLT information is merely a small subset of the information returned through the manual loop qualification process. We find that, given the totality of the circumstances, the inability of competitors to access this subset of information on a pre-order basis is not fatal to Verizon's application. Moreover, we rely on Verizon's work in the change management process to implement pre-order access to manual loop qualification, including MLT test results, through its LSOG 4 and LSOG 5 pre-order interfaces.²⁰²

66. *Other Arguments.* Finally, commenters make various other claims alleging that Verizon's provision of loop make-up information is discriminatory and violates the requirements of the *UNE Remand Order*, which we reject for the following reasons. For example, ALTS and Covad claim that Verizon's mechanized loop make-up information database -- LiveWire -- fails to meet *UNE Remand* requirements because it sometimes contains inaccurate and incomplete information, hampering competing carriers' ability to order xDSL loops.²⁰³ As we noted above, the LiveWire database Verizon makes available to competing carriers is the same database used by Verizon's retail affiliate to qualify loops.²⁰⁴ Thus, any inaccuracies or omissions in Verizon's LiveWire database are not discriminatory, because they are provided in the exact same form to both Verizon's affiliate and competing carriers.²⁰⁵

67. We also reject Covad's assertion that Verizon's inclusion of information in its LiveWire database regarding whether a loop qualifies for VADI's retail ADSL service violates the *UNE Remand Order*.²⁰⁶ Covad contends that Verizon's use of this information denies competing

²⁰⁰ See *supra* at para. 58. For example, competitors currently have pre-order access to loop information stored in the LiveWire and LFACS databases, separate and apart from information from those databases returned through the manual loop qualification process. See *supra* at paras. 56-57. Competitors may also obtain pre-order access to loop information in Verizon's paper records through an engineering query. See *supra* at para. 59.

²⁰¹ See *supra* at para. 58 & n.172.

²⁰² See *supra* at para. 58. See also Verizon February 2 *Ex Parte* Letter at 4-5, and Attach. D.

²⁰³ See ALTS Massachusetts I Comments at 27-28; ALTS Massachusetts II Comments at 18-19; Covad Massachusetts II Reply at 27-28.

²⁰⁴ See *supra* n.163.

²⁰⁵ The Commission came to the same conclusion regarding similar allegations of inaccuracies in SWBT's loop make-up information database, which was also used both by retail personnel in SWBT's separate data affiliate and competitors. See *SWBT Kansas/Oklahoma Order* at para. 126. We note that a change to LiveWire is currently in change management. When this change is implemented, LiveWire will indicate when it does not contain loop qualification data for a particular service address or telephone number, and indicate that a manual loop qualification should be requested. Verizon states that this change will follow the change management timeline for a June 2001 release. See Verizon Massachusetts II Lacouture/Ruesterholz Reply Decl. at para. 22.

²⁰⁶ See Covad Massachusetts I Reply at 9-10.

carriers access to more detailed loop information and does not allow carriers to identify the physical attributes of the loop to make a more informed judgment about the possibility of offering service. We reject this contention because we find that this information is provided to competitors *in addition* to the other loop make-up information required by the *UNE Remand Order*, and not *instead of* required information. Verizon's designation of whether or not a loop qualifies for VADI's retail ADSL service is a summary of the loop make-up information contained in LiveWire and an alternative way to provide help in determining whether the loop is adequate for providing advanced services.²⁰⁷ It does not replace the loop make-up information contained in LiveWire that is also returned with each query. In addition to the loop make-up information contained in LiveWire, competing carriers can also access actual loop make-up information from Verizon's LFACS database to the extent it is available and, upon request, Verizon will perform an engineering search of its paper records to determine the actual make-up of the loop. We therefore find that Verizon's designation of whether a loop qualifies for VADI's retail ADSL service merely supplements the other loop make-up information Verizon provides.

68. Moreover, we reject ALTS' argument that Verizon's current loop qualification processes, including its interim process for allowing competitors access to LFACS, fail to satisfy *UNE Remand* obligations because portions of these processes are manual rather than electronic. Specifically, ALTS asserts that "the only truly competitive way for [competing carriers] to receive [loop information] is electronically."²⁰⁸ The Commission specifically rejected such an assertion in the *UNE Remand Order*. That order makes clear that, to the extent an incumbent has not compiled loop information for itself, it is not required to "conduct a plant inventory and construct a database on behalf of requesting carriers." Instead, the incumbent is obligated to provide requesting competitors with nondiscriminatory access to loop information within the same time frame whether it is accessed manually or electronically.²⁰⁹

69. We also reject Sprint's contention that Verizon fails to meet its obligations under the *UNE Remand Order* because it fails to provide unfiltered access to information about its digital loop carrier (DLC) facilities. Specifically, Sprint contends that Verizon only offers information about DLC on a line-by-line basis, rather than also on the basis of "zip code of the end users in a particular wire center, NXX code, or on any other basis that the incumbent provides such information to itself," as stated in the *UNE Remand Order*.²¹⁰ The *UNE Remand Order*, however, does not require that Verizon provide loop information on the basis of zip code and NXX code if none of Verizon's personnel are able to access loop information on those bases. Rather, the *UNE Remand Order* sets forth a standard of nondiscrimination, requiring incumbents to provide loop information on any basis that any incumbent personnel may obtain that information.²¹¹ Verizon indicates that, through both its interim and long-term LFACS access

²⁰⁷ See Verizon Massachusetts I Lacouture/Ruesterholz Decl. at para. 108.

²⁰⁸ See ALTS Massachusetts II Comments at 18.

²⁰⁹ See *UNE Remand Order*, 15 FCC Rcd at 3886, para. 429.

²¹⁰ See Sprint Massachusetts II Comments at 5 (citing *UNE Remand Order*, 15 FCC Rcd at 3885, para. 427).

²¹¹ See *UNE Remand Order*, 15 FCC Rcd at 3885, para. 427.

processes, it will provide: (1) an indication that DLC equipment is present on the facility for which loop make-up has been requested; and (2) the type of DLC equipment present.²¹² The record does not contain any evidence that DLC information is available to any Verizon personnel in any form other than on a line-by-line basis, nor is there information on the record that any Verizon personnel have access to DLC information beyond the information returned through an LFACS query. Without more than Sprint's allegations to the contrary, we decline to find that Verizon fails to provide competitors with nondiscriminatory access to its loop information systems, including information about DLC facilities.

d. Ordering

70. In this section, we address Verizon's ability to provide competing carriers with access to the OSS functions necessary for placing wholesale orders. We find that Verizon demonstrates -- with performance data, the results of its third-party test, and other evidence -- that it provides competing carriers with access to OSS ordering functions in a manner that allows these carriers a meaningful opportunity to compete or in the same time and manner as it provides those functions to its retail operations. First, in subparts (i) through (iv), we address those same elements of ordering as have been probative in past section 271 orders:²¹³ confirmation notices, rejection notices, flow-through, completion notices, and jeopardy information. Then in subpart (v) we address commenters' concerns that Verizon's ordering OSS is susceptible to the same problems that led to a Consent Decree between Verizon (then Bell Atlantic) and the Commission after the company's section 271 application was approved in New York.

(i) Order Confirmation Notices

71. Using the same analysis and looking to similar performance measurements as in prior orders, we find that Verizon provides order confirmation notices in a manner that affords competitors a meaningful opportunity to compete.²¹⁴ Data indicate that for orders that flow through²¹⁵ its systems without manual handling, Verizon consistently exceeds the Massachusetts Department's benchmark of returning 95 percent of confirmation notices within two hours.²¹⁶ For orders that require some amount of manual processing (*e.g.*, complex orders, orders for nine or more loops), Verizon generally exceeds the Massachusetts Department's benchmark, with

²¹² See Letter from Dee May, Verizon, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 01-9 (filed February 26, 2001) (Verizon February 26 *Ex Parte* Letter).

²¹³ See *SWBT Kansas/Oklahoma Order* at para. 135; *Bell Atlantic New York Order*, 15 FCC Rcd at 4035, para. 163.

²¹⁴ See *SWBT Texas Order*, 15 FCC Rcd at 18438-40, paras. 171-73; *Bell Atlantic New York Order*, 15 FCC Rcd at 4035-37, para. 164, 4047-48, para. 180.

²¹⁵ See *infra* Part IV.A.2.d(iii) (discussing order flow-through in detail).

²¹⁶ For orders that flow through, Verizon returned such notices 96.56 to 99.89 percent of the time in the period from September through December 2000. See OR 1-02 (percent on time local service request confirmation, flow-through).

TAB 4

(KS/OK 271 Order ¶¶ 121-129)

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Joint Application by SBC Communications)	
Inc., Southwestern Bell Telephone Company,)	
and Southwestern Bell Communications)	CC Docket No. 00-217
Services, Inc. d/b/a Southwestern Bell Long)	
Distance for Provision of In-Region,)	
InterLATA Services in Kansas and Oklahoma)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: January 19, 2001

Released: January 22, 2001*

By The Commission: Chairman Kennard issuing a statement; Commissioner Ness concurring and issuing a statement; Commissioner Furchtgott-Roth concurring in part, dissenting in part, and issuing a statement; Commissioner Powell approving in part, dissenting in part, and issuing a statement.

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* The final version of this order was approved by the Commission on January 19, 2001.

customers. For example, in this proceeding and in accordance with the *UNE Remand Order*, we require SWBT to provide competing carriers with access at the pre-ordering stage to the same detailed information SWBT makes available to itself concerning loop make-up information so that competitors may make fully informed judgments about whether to provision xDSL service to end users.³²³ In prior orders, we have emphasized that providing pre-ordering functionality through an application-to-application interface is essential in enabling carriers to conduct real-time processing and to integrate pre-ordering and ordering functions in the same manner as the BOC.³²⁴

(i) Access to Loop Qualification Information

121. In this proceeding, we require a BOC to demonstrate for the first time that it provides access to loop qualification information in a manner consistent with the requirements of the *UNE Remand Order*.³²⁵ In particular, we require SWBT to provide access to loop qualification information as part of the pre-ordering functionality of OSS. In the *UNE Remand Order*, we required incumbent carriers to provide competitors with access to all of the same detailed information about the loop that is available to themselves, and in the same time frame, so that a requesting carrier could make an independent judgment at the pre-ordering stage about whether a requested end user loop is capable of supporting the advanced services equipment the requesting carrier intends to install. At a minimum, SWBT must provide carriers with the same underlying information that it has in any of its own databases or internal records.³²⁶ We explained that the relevant inquiry is not whether SWBT's retail arm has access to such underlying information but whether such information exists anywhere in SWBT's back office and can be accessed by any of SWBT's personnel. Moreover, SWBT may not "filter or digest" the underlying information and may not provide only information that is useful in the provision of a particular type of xDSL that SWBT offers. SWBT must provide loop qualification information based, for example, on an individual address or zip code of the end users in a particular wire

³²³ As we have explained in the prior proceedings, because characteristics of a loop, such as its length and the presence of various impediments to digital transmission, can hinder certain advanced services technologies, carriers often seek to "pre-qualify" a loop by accessing basic loop makeup information that will assist carriers in ascertaining whether the loop, either with or without the removal of the impediments, can support a particular advanced service. *See id.*, 15 FCC Rcd at 4021, para. 140.

³²⁴ *SWBT Texas Order*, 15 FCC Rcd at 18426, para. 148; *Bell Atlantic New York Order* at 4014, para. 130; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20661-67, para. 105.

³²⁵ *See UNE Remand Order*, 15 FCC Rcd 3696, 3885, paras. 427-431. This aspect of the *UNE Remand Order* had not taken effect at the time SWBT filed its second section 271 application for the State of Texas, and thus was not part of our review in that proceeding. *See SWBT Texas Order*, 15 FCC Rcd at 18367-68, para. 28.

³²⁶ *See id.* For example, SWBT must provide (1) the composition of the loop material, including both fiber and copper; (2) the existence, location and type of any electronic or other equipment on the loop, including but not limited to, digital loop carrier or other remote concentration devices, feeder/distribution interfaces, bridge taps, load coils, pair-gain devices, disturbers in the same or adjacent binder groups; (3) the loop length, including the length and location of each type of transmission media; (4) the wire gauge(s) of the loop; and (5) the electrical parameters of the loop, which may determine the suitability of the loop for various technologies. *See id.*

center, NXX code or on any other basis that SWBT provides such information to itself. Moreover, SWBT must also provide access for competing carriers to the loop qualifying information that SWBT can itself access manually or electronically. Finally, SWBT must provide access to loop qualification information to competitors within the same time intervals it is provided to SWBT's retail operations or its advanced services affiliate, Advanced Solutions, Inc. (ASI).³²⁷ As we stated in the *UNE Remand Order*, however, "to the extent such information is not normally provided to the incumbent's retail personnel, but can be obtained by contacting back office personnel, it must be provided to requesting carriers within the same time frame that any incumbent personnel are able to obtain such information."³²⁸

122. SWBT demonstrates that it offers nondiscriminatory access to OSS pre-ordering functions associated with determining whether a loop is capable of supporting xDSL advanced technologies. SWBT provides three ways for competing carriers to obtain loop make-up information. As we discuss in more detail below, competitors can request access to actual loop make-up information, theoretical, or design, loop make-up information,³²⁹ or can request that SWBT perform a manual search of its paper records to determine actual loop information. SWBT provides competitors access to actual loop make-up information contained in SWBT's back-end system Loop Facilities Assignment and Control System (LFACS) through the pre-ordering interfaces Verigate, Datagate and EDI/CORBA. Because LFACS was designed as a provisioning system, LFACS will provide the requesting carrier with actual information on the loop that SWBT or ASI, would use if it were going to provision the service requested.³³⁰ If, however, actual loop make-up information is not available in LFACS, SWBT will automatically provide theoretical, or design, loop makeup information. Specifically, SWBT will cause a query to be made into its LoopQual database for loop information based on a standard loop design for

³²⁷ The Commission required SBC to create a separate advanced services affiliate as a condition of the company's merger with Ameritech. See *Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, CC Docket No. 98-141, 14 FCC Rcd 14712 (1999)(*SBC/Ameritech Merger Order*). We note that the Court of Appeals for the District of Columbia recently issued a decision overturning the Commission's determination, in conjunction with the SBC-Ameritech merger, that the merged company could avoid the resale obligation of section 251(c)(4) for the sale of advanced services if it provided those services through a separate affiliate. *Association of Communications Enterprises v. Federal Communications Commission*, 2001 WL 20519 (D.C. Cir. Jan. 9, 2001). Although this decision addresses the separate affiliate requirements of the *SBC/Ameritech Merger Order*, it does not impact our ability to rely on SWBT's performance towards its separate affiliate in evaluating this application.

³²⁸ *UNE Remand Order*, 15 FCC Rcd at 3885-3887, paras. 427-431.

³²⁹ Design loop information is the theoretical make-up of a loop based on the standard loop design for the longest loop in the end user's distribution area. See *SWBT Ham Aff.* at para. 136. SWBT also provides a "green/yellow/red" graphic summary of the design loop information that allows requesting carriers to make a determination if a loop could support xDSL capabilities. "Green/yellow/red" is available to both competitors and SWBT. See *SWBT Chapman Aff.* at paras. 21-28; *SWBT Chapman Reply Aff.* at para. 4.

³³⁰ *SWBT Cullen Reply Aff.* at paras. 3 and 4.

the longest loop in that end user's distribution area.³³¹ The requesting carrier can then use this theoretical loop information to determine if it would be willing to provide xDSL service to that end-user. Additionally, a carrier may also request loop design information without having to first request an actual loop make-up query. Finally, carriers may also request that SWBT perform a manual search of SWBT's engineering records. Such a request may be submitted via Verigate or DataGate directly to SWBT's engineering operations personnel. Once SWBT engineers complete the manual search, they will update the information in LFACS and the competing carrier can either receive the results via email or review the results in LFACS.³³²

123. We find that SWBT provides these mechanized and manual processes to competing carriers in a nondiscriminatory fashion and allows access to loop qualification functionality as a pre-ordering function in substantially the same manner as it does for itself. Where loop make-up information resides in an electronic format within SWBT's systems, SWBT enables competing carriers access to this information. SWBT uses the LFACS database to determine actual loop makeup information for its retail operations in exactly the same fashion that it is made available to competing carriers.³³³ LFACS will automatically return information on an available, non-loaded copper loop as if it were provisioning the requested service to the specific address.³³⁴ SWBT uses this same mechanized information for its own internal provisioning³³⁵ and ASI receives the exact same information via the exact same interfaces.³³⁶ In addition, when performing the manual lookup, SWBT performs the same process and returns the same type of information to the requestor regardless of whether it is for a competing carrier, or ASI, or itself.³³⁷

124. Furthermore, SWBT allows competing carriers access to the same detailed information about the loop that is available in its records or databases. Specifically, in accordance with the requirements detailed in the *UNE Remand Order*,³³⁸ SWBT provides competing carriers

³³¹ SWBT Ham Aff. at para. 136; SWBT Cullen Reply Aff. at para. 3, n.3.

³³² SWBT Chapman Aff. at paras. 30-31.

³³³ SWBT Cullen Reply Aff. at para. 3.

³³⁴ *Id.* at para. 4; SWBT Chapman Reply Aff. at para. 5. SWBT will automatically perform a line and station transfer to ensure that competing carriers can provide DSL capable services on any spare loop available to a specific end-user's address in the event that the existing loop is incapable of supporting DSL service, such as a digital loop carrier, or if only one loop existed. In these circumstances, SWBT might connect portions of another loop to create an additional loop over which it could provide the DSL service. *See* SWBT Welch Reply Aff. at para. 5.

³³⁵ SWBT Chapman Reply Aff. at para. 6.

³³⁶ SWBT Cullen Reply Aff. at para. 3. The interfaces are the GUI Verigate, application-to-application Datagate and the industry standard EDI/CORBA.

³³⁷ *See* SWBT Chapman Aff. at para. 21.

³³⁸ *See UNE Remand Order*, 15 FCC Rcd at 3885, para. 427.

access to information about: (1) the composition of the loop material, including both fiber and copper; (2) the existence, location and type of any electronic or other equipment on the loop, including but not limited to, digital loop carrier or other remote concentration devices, feeder/distribution interfaces, bridge taps, load coils, pair-gain devices, disturbers in the same or adjacent binder groups; (3) the loop length, including the length and location of each type of transmission media; (4) the wire gauge(s) of the loop; and (5) the electrical parameters of the loop, which may determine the suitability of the loop for various technologies.³³⁹

125. SWBT's performance data reflect that it provides responses to competing carrier requests for loop information in substantially the same time and manner as for itself.³⁴⁰ Significantly, commenters have not asserted in this proceeding that SWBT returns loop make-up information in an untimely manner.

126. Commenters, however, have raised a number of claims alleging that SWBT's provision of loop make-up information is discriminatory and violates the requirements of the *UNE Remand Order*. For the reasons discussed below, we reject these claims. IP Communications claims that SWBT's actual loop makeup information database is inaccurate and thus harms competing carriers when they place orders for loops based on inaccurate information.³⁴¹ As we noted above, when searching for loop qualification information, both competing carriers and SWBT utilize the LFACS system.³⁴² Thus, any inaccuracies in SWBT's database, because they affect SWBT in the same fashion as competing carriers, are not discriminatory.

127. We also reject Allegiance's and McLeodUSA's assertion that SWBT's use of the green/yellow/red loop information and the theoretical loop design information violates the *UNE Remand Order*.³⁴³ These commenters contend that SWBT's use of this information denies competing carriers access to more detailed loop information and does not allow carriers to identify the physical attributes of the loop to make a more informed judgment about the possibility of offering service. We reject this contention because we find that this information is provided to competitors in addition to the actual loop makeup information. As noted above, the design loop information provided by SWBT is information on a theoretical loop based on a standard loop design for the longest loop in that end user's distribution area.³⁴⁴ SWBT's green/yellow/red

³³⁹ See SWBT Chapman Aff. at para. 18.

³⁴⁰ See SWBT Aggregated Performance Data, Measurement No. 1, SWBT Region-wide, at 271-No 1c; SWBT Aggregated Performance Data, Measurement No. 1.1-01, SWBT Region-wide, at 271-No 1.1. We note that SWBT reports pre-ordering response time and availability on a region-wide basis. Since the record in this proceeding demonstrates that SWBT's pre-ordering systems and processes are the same throughout the five-state region, we need not review state specific performance data.

³⁴¹ IP Comments at 15-17.

³⁴² SWBT Cullen Reply Aff. at para. 3.

³⁴³ Allegiance Comments at 33; McLeodUSA Comments at 34.

³⁴⁴ SWBT Ham Aff. at para. 136; SWBT Cullen Reply Aff. at para. 3, n.3.

designation is a graphical summary of the design loop information and an alternative way to provide the competitor with help in determining if the theoretical loop is adequate for providing advanced services.³⁴⁵ In addition to design loop information and green/yellow/red information, competing carriers can also access SWBT's actual loop makeup information, to the extent it is available and, upon request, SWBT will manually search its paper records to determine the actual makeup of the loop.³⁴⁶ We therefore find that SWBT's green/yellow/red designation merely supplements the other formats of loop makeup information SWBT provides.³⁴⁷ In accordance with the *UNE Remand Order*, we find that SWBT provides competing carriers access to the same "detailed information" about a loop that is available in its own databases or other internal records.³⁴⁸

128. We also disagree with IP Communications' assertion that SWBT violates the *UNE Remand Order* by allowing competing carriers access only to "filtered" loop make-up information.³⁴⁹ According to IP, when SWBT returns actual and manual loop make-up information to the competing carrier, it provides information on only the "best" loop for the competing carrier, screening out information on other possibly available loops.³⁵⁰ IP asserts that there are numerous situations where a competing carrier may not want the loop SWBT provides and therefore needs to view loop information on all available loops.³⁵¹ IP suggests that by failing to return information on all possible loops at an address, SWBT impermissibly "filters" the loop make-up information. SWBT acknowledges that it returns information on only one loop, but contends that the *UNE Remand Order* does not require more.³⁵² We find that it is not self-evident from the *UNE Remand Order* that a BOC must provide loop make-up information on all loops that serve a particular address and thus we do not find SWBT to be in violation of that order. Furthermore, it would be inappropriate to resolve this issue within the context of a section 271 proceeding. This issue is best resolved by a rulemaking proceeding in which all interested parties

³⁴⁵ See SWBT Chapman Aff. at paras. 22-28.

³⁴⁶ SWBT Chapman Aff. at para. 22-32; SWBT Chapman Reply Aff. at para. 4.

³⁴⁷ *Id.*

³⁴⁸ *UNE Remand Order*, 15 FCC Rcd at 3885, para. 427.

³⁴⁹ IP Comments at 13.

³⁵⁰ *Id.*; see also Letter from Howard J. Siegel, Vice President of Regulatory Policy, IP Communications Corp. to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-217, at 2 (filed November 30, 2000) (IP November 30, 2000 *Ex Parte* Letter).

³⁵¹ IP Comments at 13-14.

³⁵² See SWBT Reply at 69-70. SWBT explains that, when a pre-order request for actual loop make-up information is made and actual information is available, LFACS will transmit to the requestor information on the loop that LFACS would use if LFACS were provisioning the service requested.

are able to comment. Therefore, we invite IP, or any other interested party, to file a petition for declaratory ruling or a petition for a rulemaking on this issue.³⁵³

129. Finally, we reject IP's contention that SWBT does not comply with the *UNE Remand Order* because SWBT fails to return information on copper loops when end users are served by fiber (e.g., where SWBT has deployed fiber to remote terminals under its "Project Pronto"). In such instances, IP states, SWBT returns information on characteristics of the loop served by the digital loop carrier that may be the "best" loop to a given end user but which is incompatible with the competing carrier's service.³⁵⁴ We agree that this practice, if true, would appear to violate the *UNE Remand Order*. In its reply comments, however, SWBT satisfactorily answers IP's assertion. SWBT explains that, in such an instance, its systems would automatically return loop make-up information on a copper loop running to the end user, if one exists or if a spare loop can be assigned, rather than make-up information on the fiber loop.³⁵⁵ Furthermore, SWBT clarifies that it instructs its engineers who perform manual look-ups to return information on an all-copper loop in those situations where the end user is served by both a digital loop carrier and the copper loop.³⁵⁶ We find that this satisfies the requirements of the *UNE Remand Order* and this checklist item.

(ii) Pre-Ordering Functionality and Integration

130. We also find that SWBT provides carriers in Kansas and Oklahoma nondiscriminatory access to all pre-ordering functions and enables these carriers to integrate pre-ordering and ordering functions. SWBT offers requesting carriers in Kansas and Oklahoma access to the same application-to-application interface, DataGate, that it makes available to carriers in Texas.³⁵⁷ As in the Texas order, we find that the DataGate interface allows competing carriers to access the same pre-ordering functions that SWBT provides to itself.³⁵⁸ The DataGate interface allows competing carriers to perform a wide range of pre-ordering functions for both resale services and UNEs. Specifically, carriers are able to use DataGate to: (1) validate addresses; (2) retrieve customer service records; (3) select and reserve telephone numbers; (4)

³⁵³ We note that, even in the event that the *UNE Remand Order* requirements are read to mean only the "best" loop, state commissions would nevertheless have the authority to impose additional obligations consistent with the Act.

³⁵⁴ IP November 30, 2000 *Ex Parte* Letter.

³⁵⁵ SWBT Welch Reply Aff. at paras. 5-6; SWBT Chapman Reply Aff. at para. 8.

³⁵⁶ SWBT Chapman Reply Aff. at para. 11.

³⁵⁷ The Ernst & Young Report found that SWBT's DataGate interface was the same throughout SWBT's five-state region. See SWBT Br. at 20, n. 32; Ernst & Young Supplemental Report, Kelly Aff., Attach. A at 4.

³⁵⁸ *SWBT Texas Order*, 15 FCC Rcd at 18427, para. 149. The DataGate interface is based on SWBT's proprietary pre-ordering functionality, and allows competing carriers to acquire pre-ordering information using their own software programs or applications. See SWBT Ham Aff. at para. 123.

AT&T December 6 Ex Parte Letter
Exhibit 3

(Stemple Declaration & Internal Qwest Management Emails,
originally filed with AT&T's initial comments in this
proceeding)

**Qwest Communications International Inc.,
Consolidated Application for Authority to
Provide In-Region, InterLATA Services in
Colorado, Idaho, Iowa, Montana, Nebraska,
North Dakota, Utah, Washington, and Wyoming**

WC Docket No. 02-314

I. SUMMARY.

1. My name is Edward F. Stemple. Until September 4, 2002, I was employed by Qwest as a Service Representative in the Qwest CLEC Coordination Center ("QCCC"), located in Omaha, Nebraska. My duties included coordinating cuts from end users who had phone service with Qwest (in Nebraska and the other Qwest states) and who were switching their service to CLECs. My duties also included running a mechanized loop test ("MLT") on each line that was to be "cut over" from Qwest to a CLEC. Although my co-workers and I were instructed to run an MLT for each line, during visits in 2002 from the staff of the Federal Communications Commission ("FCC"), Qwest supervisors instructed the service representatives who were to be observed by the FCC to perform the cutover process without performing MLTs. These supervisors instructed my co-workers not to bring up the MLT screen on their computers and not to raise the issue of MLT testing with the visiting FCC staff. My colleagues were also

instructed that, if the visiting FCC staff were to ask whether customer service representatives run MLTs, that they should tell the regulators that Qwest does not run MLTs. These instructions from our Qwest superiors created a lot of "heartburn" for my colleagues and I, because we did not understand why we should be hiding the MLT testing from the FCC. When we confronted our Qwest superiors about this, we were told that if the FCC knew about the MLT testing, they might help CLECs get access to Qwest systems. About a week after the last FCC visit, which took place on or about July 23, 2002, and while I was still employed with Qwest, I reported what had happened at the QCCC in an e-mail to Senator John McCain, who I knew was involved in the investigations of Qwest. I received only a form e-mail reply. I recently decided to contact AT&T, because I believe that Qwest's conduct was wrong and that it should be brought to the attention of regulators.

II. BACKGROUND

2. I graduated from high school in 1974, and later enlisted in the Navy, where I served for five years, including overseas duty in Italy. In the Navy, I received some basic training as an electrician. Over the years, I have enrolled in a variety of coursework at community colleges, completing about 2 years worth of study. Before working at Qwest, I was a partner in a small business, and worked as a customer service representative for Mutual of Omaha Insurance.

3. I began working for U S West in Omaha, Nebraska, on March 16, 1998, as a Sales Consultant. In November 1999, I became a Customer Experience Manager in the Held Order Department. In that department, my responsibilities were to assist customers who did not have a dial tone. In August 2001, after the merger of U S West and Qwest, I moved to the QCCC as a Service Representative. I reported to a "coach," who was responsible for overseeing a number of Service Representatives. I also served as a union steward – one of about 4 or 5 at the QCCC.

My principal duties as a union steward were to assist my co-workers in resolving issues with management. Because of that position, my co-workers often came to me to raise issues that would arise at the QCCC.

III. RESPONSIBILITIES AT THE QCCC RELATING TO MLT

4. My duties at the QCCC included the coordination of cuts for end users who were changing their local service to a CLEC. I would be responsible for overseeing a number of cuts in the course of a day. I would learn of the cuts taking place on a given day, generally within 48 to 72 hours of the cut. The coordination of the cut often required a number of steps, including calls to other divisions within Qwest and to the employees of the CLEC.

5. As part of the responsibilities in coordinating cuts, my co-workers and I were responsible for performing MLTs. We were required to perform the MLT for each line that was cut. Initially, we received very limited training regarding the MLT, and I had only a very limited idea regarding the purpose of the MLT and no idea how to interpret the results of the MLT.

6. To perform the MLT, we entered the phone number of each line involved in a cut into a Qwest system, which then ran the MLT. After a few minutes, the results of the test would appear on a computer screen. There were very many data fields associated with the MLT results, including information like the loop length, voltage measurements, the office equipment numbers, switch type and version codes or error message. Initially, we were instructed simply to cut and paste the test results as an "osslog" note into another Qwest system. My understanding is that the test results were retained and could be accessed by other Qwest employees.

7. Over time, my co-workers and I were required to interpret some of the MLT results, in addition to cutting and pasting them into the "osslog" note. Although we received some additional training about the MLT, the additional responsibilities were often unclear and the process was constantly being changed. For example, at one time, we were required to

examine certain data points, and determine if they fell within certain parameters. If the results were outside the parameters, my co-workers and I were instructed to inform our coaches. At a later time, an additional group of more highly skilled technicians was brought in, and we were instructed to raise issues about the MLT with these employees.

IV. INSTRUCTIONS TO HIDE MLT DURING VISITS FROM REGULATORS

8. Regulators from time to time visited the QCCC. On or about July 23, 2002, regulators that I was told were members of the FCC staff visited the QCCC. I did not become aware of the visit until the day the FCC staff arrived. That day, I was approached, in my role as union steward, by a number of other service representatives. These employees told me that certain employees had been taken into a room and told by Kathie Simpson, who was second in command at the QCCC, that they had been selected to be observed in the performance of their jobs by the visiting FCC staff.

9. However, they were also told that, while the FCC people were sitting in, they were not to pull up the MLT screen or to mention MLT. They were also told that, if the FCC staff asked about MLT, they should say that they did not run them. Although I understand that these directions came from Ms. Simpson, other Qwest executives were also present that day at the QCCC, including Scott Simanson, a Qwest executive from Denver, and Tim Sandos, a Qwest Vice President for the Omaha Region.

10. Needless to say, the instructions that my co-workers received caused a great deal of concern. First, some of my co-workers expressed concern that they could later be subject to discipline if they failed to perform the MLT for the cuts observed by the FCC. Because the MLT was a job requirement, these employees felt that they could later be penalized if they failed to perform the test. Second, everyone was aware at the time about all of the investigations of Qwest, and the employees expressed concern to me and others that hiding this from the FCC was

simply wrong. My own view was that hiding this information from regulators was definitely wrong and was the same type of activity that had gotten Qwest in so much trouble already. Nevertheless, I was informed that my co-workers obeyed Ms. Simpson's instructions regarding MLT, and did not reveal any information about the MLT process to the FCC staff.

11. The FCC visit lasted several hours, and over the course of the visit, concern from those on the floor grew. While the FCC was still there, I approached my manager, Jason Best and told him I thought hiding this from federal regulators was wrong. I then asked him why I shouldn't walk out on the floor and tell the FCC representatives about the instructions my co-workers received regarding the MLT process. He told me that I would be fired if I told the FCC Staff about the MLT and the instructions to conceal it.

12. Employee concern remained high after the FCC visit. Two days after the visit, on July 25, 2002, my co-workers were forwarded an e-mail by Mary Pat Cheshier, who was the head of QCCC. As I interpreted it, this e-mail was the management's way of addressing the service representatives' concerns about the FCC visit. However, the e-mail did not satisfy me, or most of my co-workers. It seemed to confirm that Qwest was trying to hide something from the FCC about the MLT process. Ms. Cheshier's e-mail said that she wanted to "clarify an issue around the MLT testing and our FCC visit." But as Ms. Cheshier explained, Qwest had "made an effort to diminish the visibility to MLT during these visits for the sole purpose of protecting access to our legacy systems." I have attached the July 25, 2002 e-mail to my declaration.

13. I and many of my co-workers were not satisfied with this explanation, and felt that it was simply an effort to "spin" the concealment of information from regulators. In my view, to "diminish the visibility" of the MLT process is simply another way to say that Qwest wanted to hide the existence of the MLTs from the regulators.

14. On August 2, 2002, I decided to take some action with respect to the FCC visit. I was aware that Senator John McCain was involved in questioning various Qwest executives about a variety of alleged wrongdoing. His comments led me to send him an e-mail that set forth what had happened during the FCC visit. However, other than an automated e-mail response, I have not heard from Senator McCain or his staff. I have attached my e-mail to Senator McCain and the automated response from this office.

15. On September 4, 2002, I was terminated by Qwest. I recently contacted AT&T because I believed Qwest's conduct was wrong and should be brought to the attention of the regulators.

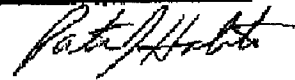
VERIFICATION PAGE

I declare under penalty of perjury that the foregoing Declaration is true and correct.

/s/ 
Edward T. Stemple

Executed on: Oct. 9, 2002





ATTACHMENT 1

(e-mail addresses have been redacted)

Subject: MLT explanation
Date: Thu, 25 Jul 2002 09:46:00 -0500
From: Mary Pat Cheshier [REDACTED]
Organization: U S WEST Communications, Inc
To: Marsha Smith [REDACTED]

Marsha, please fwd to the QCCC organization.

QCCC team,

I would like to clarify an issue around the MLT testing and our FCC visit. We have made an effort to diminish the visibility to MLT during these visits for the sole purpose of protecting access to our legacy systems. Since we started 271 efforts, CLECs have been very vocal about us providing them access into our systems, processes, C O's, data analysis, etc. Some of it we have been mandated to provide as a result of the Telecommunications act and the contracts we have with the CLECs.

We have taken a strong stance that our legacy systems are proprietary and allowing competitors access to them could be detrimental to our business. To date we have been successful in winning this argument.

CLECs have specifically asked for access to MLT. We believe this is a part of our legacy system we want to keep proprietary. As a result we don't want to bring attention to it in front of the FCC as they may have a tendency to respond to CLEC requests in a manner which may be unfavorable to us.

The MLT test is critical to our success in providing quality service to our CLEC customers. The work you do in performing the MLT test is extremely important and the internal process focus and results are highly visible to the Network organization.

Hope this eliminates any confusion.

Mary Pat

ATTACHMENT 2

(e-mail addresses have been redacted)

k977

From: "Senator McCain" <Senator_McCain@mccain.senate.gov>
To: "Swamp Dogg" [REDACTED]
Sent: Thursday, August 01, 2002 10:48 AM
Subject: Re: Recent Telco Hearing on CSPAN

* Automated Response *

Dear Friend:

Thank you for taking the time to contact my office. Your views and opinions are important to me.

Due to the high volume of Internet requests that I receive daily, I am unable to provide you with an immediate response. However, if you have included a current mailing address and phone number, you will receive a response by phone or via the U.S. Postal Service. If you did not include a mailing address and would like to receive a response, please feel free to 'reply' to this email, attach a copy of your original message, and be sure to include your postal address and phone number.

I regret any inconvenience that this delay in corresponding may cause. Again, thank you for contacting my office.

Sincerely,

John McCain
U.S. Senator
Website www.senate.gov/~mccain

Reply Separator

Subject: Recent Telco Hearing on CSPAN
Author: Swamp Dogg [REDACTED] at Internet
Date: 08/01/2002 12:48 AM

Dear Senator,

As I watched you ask the "tough" questions of the three Telecom companies on 1 the other day I couldn't help but appreciate your candor. It did not escape me that you weren't buying into to much of what you were hearing from them.

Although I am not one of your Arizona constituents, we do share the same local carrier in Qwest. I work for Qwest at the QCCC (Qwest Clec Coordination Center) in Omaha. I have wrestled with playing the role of whistle-blower for a week now but watching you in that hearing prompts me to see past my next paycheck and

9/30/2002

take this course of action. Undoubtedly it will cost me my job.

On July 23, the FCC came to the QCCC in Omaha. Prior to their arrival, the management in my center removed all visible reference to what we call MLT testing from bannerboards and team checklists that could have been observed by the regulators. There was a small handful of employees selected by management to "sit" with the folks from the FCC. They were herded into a room and informed that when in the presence of the FCC they were not to run or make mention of MLT testing.

As a union steward I got great heartburn over these actions. When I asked my supervisor why I shouldn't just approach the FCC and tell them we were hiding test results I was told in no uncertain terms that I would be fired. I am not sure of the motive the company has for hiding these test results. I do know that it was done quite hastily and has become the "water cooler" conversation on the floor. Many of my union members have concerns about why the union didn't do something. After watching Qwest upper management dance around your questions the other day I decided I should do something. Corroboration of this activity would be a minor matter by simply questioning a handful of frontline employees in the center.

Perhaps members of the FCC can clarify for you what MLT testing is and why hiding it from them would benefit Qwest. It would be strictly conjecture on my part. I have my theories but that is all I have. The larger bone of contention is that my company is already high on the "Don't trust anything they say" list. Qwest's lack of credibility has navigated us to the place we are now. There is no way to put a dollars and cents cost on credibility but I know it has cost many of my friends, co-workers and fellow union members their life savings and in many cases their jobs also. In the QCCC where I work, people have been fired with regard to MLT testing and many people are currently involved in disciplinary actions over the same.

I chose to put this on your plate rather than going to a competitor or the media for several reasons. As a Republican, a Viet Nam era Navy veteran, a union steward and mostly just as a working man, I felt you would decide whether or not this merits any further attention and do so in the best interest of all concerned. Personally I feel it concerns everyone who uses the telephone and the internet and simply believes it's wrong to hide things from the FCC on Tuesday the 23rd then on Tuesday the 30th speak out of the side of your mouth about how you are cooperating fully. I'll find someplace else to work instead.

I read a lot about you after I saw you on CSPAN so I know you are familiar with Captain Howard W. Gilmore. That is the ship I served on in 1974 and 1975 in LaMadelena, Sardinia. Subtender (AS-16). Although I was considered a Vietnam era vet, I was in the Med for two years and served another four years as a Musician in the US Navy Band. I'm hardly a war hero but I served and I'm proud of it. I am an avid historian however and I would leave you with the same final words Howard Gilmore left his crew with....

"Take her down."

9/30/2002